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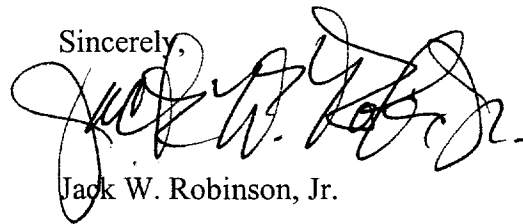
David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Docket to Establish Generic Performance Measurements, Benchmarks and
Enforcement Mechanisms for BellSouth Telecommunications, Inc.
Docket No. 01-00193

Dear Mr. Waddell:

Please find enclosed for filing the original and 13 copies of Post-Hearing Brief of CLEC Coalition in the above-captioned proceeding. Copies are being served today on counsel for all parties of record as indicated on the attached Certificate of Service. Thank you for your assistance in this matter.

Sincerely,



Jack W. Robinson, Jr.

Encls.

cc: Counsel for all Parties of Record

BEFORE THE TENNESSEE REGULATORY AUTHORITY

In re: GENERIC DOCKET ON)
 PERFORMANCE MEASUREMENTS)

Docket No. 01-00193

POST-HEARING BRIEF OF CLEC COALITION

The CLEC Coalition, consisting of AT&T Communications of the South Central States, Inc. (AT&T), ACCESS Integrated Networks, Inc., the Association of Communications Enterprises (ASCENT), Birch Telecom of the South, Inc. (Birch), Brooks Fiber Communications of Tennessee, MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc., (WorldCom), DIECA Communications d/b/a Covad Communications Corporation (Covad), ICG Communications (ICG), Mpower Communications Company, Inc. (Mpower), Time Warner Telecom of the MidSouth, LP (Time Warner), and XO Tennessee, Inc. (XO), hereby submits its Post-Hearing Brief in this matter.

INTRODUCTION

Performance measures (also called metrics) and self-executing remedies are crucial to ensuring that local exchange markets become and remain irreversibly open to competition. Improved OSS functionality, enhanced performance measurements, appropriate performance standards and remedies will be critical factors in enabling CLECs to enter the Tennessee local market, particularly the residential market. Many of the metric revisions and new metrics proposed by the CLEC Coalition are geared toward ensuring that the CLECs' market entry does not run into many of the same impediments encountered elsewhere. Without these, any inroads made into the exchange and exchange access market through implementation of the

requirements of Section 251 of the Telecommunications Act of 1996 cannot be sustained.

The Authority is starting its evaluation from a strong position of experience with this issue in its already having ordered a set of performance measures and remedies in the arbitration between BellSouth and ITC^DeltaCom. Building on that decision to adopt comprehensive metrics, thorough annual audits of the accuracy of BellSouth's self-reporting, and meaningful self-executing remedies will be one of the most significant actions this Authority can take. Measurements should cover those problems that can and have arisen through real market experience.

In addition to adopting a comprehensive set of measures, the Authority should adopt a self-executing remedy plan designed to provide sufficient incentive for BellSouth to meet its obligations under the Telecommunications Act of 1996 to provide CLECs with service at parity with that it provides itself and to open its local markets to competition. The remedy plan proposed by the CLECs in this proceeding incorporates the criteria identified by the FCC for designing an effective remedy plan and is the appropriate plan for the Authority to adopt in this proceeding.

ISSUES AND ARGUMENTS

ISSUE: APPROPRIATE SERVICE QUALITY MEASURES TO BE REPORTED BY BELL SOUTH

It is important that performance measurements capture all key aspects of ILEC service. The major measurement categories, for the most part, are the major categories of OSS: preordering, ordering, provisioning, maintenance and repair, and billing. In addition, the following categories of measurement should be included: operator service and directory assistance ("OS/DA"), database information, E911, trunk group performance, collocation, and change management. The Authority's February 21, 2001 Order in Docket

No.99-00430 (the “February Order”) puts in place many, but not all, of the components necessary for an effective performance measurement methodology. While the February Order contains many of the measurements, standards and disaggregation requirements needed by CLECs, they require some additions and modifications to be truly comprehensive.

A performance measurement plan needs to be comprehensive because significant gaps in coverage make it practically impossible to detect and deter below parity performance. If an area of BellSouth’s performance is not covered by a metric, the primary tool available to remedy poor performance is an action to enforce the party’s interconnection agreement. Enforcement actions based upon disparate treatment can be “uphill battles” because the CLEC has to prove that BellSouth is providing better service to itself, its customers or its affiliates than to the CLEC. To prove its case, the CLEC must obtain accurate internal BellSouth information concerning the services it provides to itself, its customers or its affiliates. Even if this can be done, an enforcement case takes far too long for a CLEC attempting to solve an immediate problem affecting its business. Thus, comprehensive performance metrics go “hand-in-hand” with the potential for broad scale entry into the local market. (Kinard Direct at 9.)

In addition to improved OSS functionality, other factors such as enhanced performance measurements, standards and remedies will be critical in enabling CLECs to enter the Tennessee local market. Many of the metric revisions and new metrics (particularly those involving change management, confirmation and rejection completeness, software validation and error correction, and timely completion notices) are geared toward ensuring that CLECs’ market entry does not encounter many of the same

impediments encountered elsewhere. These impediments have slowed CLECs' growth, particularly in the residential market. They also have harmed customers with double billing and sometimes even local service termination when ILECs erroneously concluded that a customer was not paying its bills, when in fact the customer had switched to a CLEC and was paying the CLEC's bills. (*Id.* at 12 – 13.)

On January 16, 2001 the Georgia Public Service Commission issued a final order in its performance measurement docket. See *In re: Performance Measures for Telecommunications Interconnection, Unbundling and Resale*, Order, Docket No. 7892-U. This order added seventeen metrics to BellSouth's then-filed plan. BellSouth's proposal in Tennessee includes most of these additional metrics with the exception of Percent Completions/Attempts without Notice or < 24 hours notice; BFRs processed in 30 business days; and BFR Quotes provided in X days. (Kinard Direct at 17.)

The Florida Public Service Commission has also recently approved service quality measures to be reported by BellSouth. *In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies*, Florida Docket No. 000121-TP, Order No. PSC-01-1819-FOF-TP, Issued September 10, 2001 ("*Florida Order.*") All 71 metrics proposed by BellSouth were adopted as part of the Florida SQMs. In addition, the following four metrics proposed by the CLECs (termed "ALECs" in Florida) were added to the Florida SQMs: "Percent Order Accuracy"; "Percent Completion/Attempts without a Notice or with less than 24 Hours Notice"; "Percent Completion of Timely Loop Modification"; and "Percent Billing Errors Corrected in x Days". (*Id.* at 17.) The Florida Commission also clarified the metric "Percent Successful xDSL Service Testing," (*id.* at 13), and called for

further consideration of the metric “Percent of Orders Cancelled or Supplemented at the Request of the ILEC” during the Commission’s six month review.

Although the CLEC Coalition does not object to adding BellSouth’s proposed metrics to the performance plan in Tennessee, it does take issue with some of BellSouth’s proposed business rules, exclusions, calculation, and levels of disaggregation and performance standards for those measures, discussed below under “Issue: Appropriate Business Rules, Exclusions, Calculations, Levels of Disaggregation and Performance Standards for Each.” In addition to those metrics already ordered by the Authority, the CLEC Coalition requests that the following measures, ordered by Georgia (in its January 16, 2001 Order in Docket No. 7892-U) be required by the Authority. Those metrics noted below that were proposed by BellSouth in this proceeding were also incorporated into the Florida Order.

Response Time for Manual Loop Make-Up (LMU) Queries (Metric PO-1 proposed by BellSouth.)

Response Time for Electronic LMU Queries Acknowledgement Timeliness (Metric PO-2 proposed by BellSouth.)

Acknowledgement Completeness (Metric O-2 proposed by BellSouth.)

FOC/Reject Response Completeness (Metric O-11 proposed by BellSouth.)

Percent Completions/Attempts w/o Notice or < 24 hours notice (Required by Florida. *Florida Order* at 13 – 14.)

Average Recovery Time for Coordinated Cuts (Metric P-6B proposed by BellSouth.)

Cooperative Acceptance Testing Attempts vs. Requested by CLECs (Metric P-7 proposed by BellSouth.)

Recurring Charge Completeness (Metric B-7 proposed by BellSouth.)

Non-recurring Charge Completeness (Metric B-8 proposed by BellSouth.)

Mean Time to Notify CLECS of Network Outages (Metric M&R-7 proposed by BellSouth.)

Mean Time to Notify CLECS of Interface Outages (Metric CM-5 proposed by BellSouth.)

Average Database Update Interval (Metric D-1 proposed by BellSouth.)

Percent Database Update Accuracy (Metric D-2 proposed by BellSouth.)

NXX and LRNs loaded and tested by LERG date (Metric D-3 proposed by BellSouth.)

BFRs processed in 30 business days

BFR Quotes provided in X days (This metric is very similar to one already required by

the Authority called “Percentage of quotes provided for authorized BFRs/special requests within X days (10, 30, 90) days.”)

Metrics Ordered by the Authority that BellSouth Does Not Want to Implement:

1. Percent Firm Order Confirmation Returned Within Specified Time

BellSouth argues that this measure is “simply duplicative” of BellSouth’s existing (FOC) Timelines measure. (Coon Direct at 43.) Yet it is different in that the benchmark levels ordered by the Authority are more favorable to CLECs. Specifically, the Authority’s metric, based on the Texas plan, would require BellSouth to return **95%** of Partially Mechanized FOCs within **5** business hours. BellSouth’s proposal would require BellSouth to return only **85%** of Partially Mechanized FOCs within **10** business hours. (Sauder Direct at 5, 10 – 11.) Recently, the Florida Public Service Commission has ordered many of BellSouth’s benchmarks increased to the 90% and 95% levels:

As to benchmarks, we agree with the ALEC Coalition that benchmarks set below 90 or 95 percent do not generally allow the ALECs a meaningful opportunity to compete. We are increasing many of the benchmarks that are set below this level for both reporting and compliance purposes. (*Florida Order* at 139.)

The CLEC Coalition believes that the benchmarks the Authority has already ordered for this measure should be retained in the final plan, as they are more pro-competitive than the weaker benchmarks proposed by BellSouth and should be achievable.

2. Percent of Accurate and Complete Formatted Mechanized Bills

This measurement reflects whether all components of a BellSouth bill are formatted in accordance with industry standards to ensure that the bill transmits properly to the CLEC. (Kinard Rebuttal at 6 – 7.) CLECs need properly formatted mechanized bills to audit the voluminous charges assessed by BellSouth. BellSouth’s main argument against this measure is that BellSouth does not think CLECs will find the report useful. (Coon

Direct at 45.) The Authority should not reverse itself based on this assertion, which is refuted by the CLECs who believe this report would be useful. (Kinard Rebuttal at 5 – 6.)

3. Billing Completeness

BellSouth argues that this measure duplicates information measured when other BellSouth SQM measures are considered. (*Id.* at 46.) This is accurate, but the benchmark is different. The benchmark should be parity for all types of service delivery methods, not just resale. (Kinard Rebuttal at 6.) If BellSouth plans to use a benchmark, it should be 98%, not 90% for completeness. (*Id.*)

4. Unbillable Usage. The Coalition does not oppose elimination of this metric.

5. Percentage of LNP-only Due Dates within Industry Guidelines

BellSouth argues this measurement is “unnecessary” and claims it “doesn’t make sense” because it depends on a fixed industry guideline due date. (Coon Direct at 47.) Just as with other measurements of whether CLECs are receiving service within a standard interval—when requested—this metric could allow the exclusions of CLEC requests that are longer or shorter than the standard interval. (Kinard Rebuttal at 7.)

6. Percentage of Time the Old Service Provider Releases the Subscription Prior to Expiration

BellSouth contends that its LNP-Average time BellSouth Applies the 10-digit Trigger Prior to the LNP Order Due Date is a direct substitute for this measure. (Coon Direct at 49.) Yet BellSouth’s substitute measure covers different aspects of these administrative processes. While the Authority-ordered metric measures the times BellSouth applies the trigger, the BellSouth proposal does not pick up whether BellSouth applies the trigger at all, just the average time the trigger was applied, whenever applied. (Kinard Rebuttal at 7.) BellSouth’s measure is not a substitute for the Authority-ordered measure at issue, as

BellSouth does not apply the 10-digit trigger in all cases. (*Id.*)

7. Percentage of Time Customer Account Restructured Prior to LNP Due Date

Witness Coon incorrectly argues that this measurement is duplicative of one done by the BellSouth SQMs. (Coon Direct at 48.) This metric captures whether BellSouth has restructured its Centrex and other customer accounts prior to the switch to a new carrier so as not to avoid delays from such restructuring. (Kinard Rebuttal at 8.) It should, therefore, be required in a final plan.

8. Percentage of Premature Disconnects for LNP Orders

BellSouth argues this measurement is not necessary because it is covered LNP-Average time BellSouth Applies the 10-digit triggers prior to the LNP Order Due Date. (Coon Direct at 49.) As BellSouth concedes, BellSouth's metric, however, does not include early and late cuts as Missed Appointments. (Tr. Vol. I-D at 276 – 277.) The 10-digit trigger is not a substitute for measuring timely disconnects. The trigger may not have been applied at all, or removed too early. Unlike this CLEC-proposed metric, BellSouth's measure inappropriately fails to capture such occurrences. (Kinard Rebuttal at 8.)

9. Percentage of Updates Completed into the Database Within 72 Hours for Facility Based CLECs

BellSouth claims this measurement is unnecessary and is covered by BellSouth's SQM. (Coon Direct at 49.) Though BellSouth does have a similar metric in its current SQM, a neutral third party must determine whether the processes are parity by design for all service delivery methods, as BellSouth claims. This is not readily apparent. (Kinard Rebuttal at 8.)

10. Percentage DA Database Accuracy for Manual Updates

BellSouth argues that this measurement relies on data provided by CLECs and thus

is not consistent with the Authority's policies. (Coon Direct at 50 – 60.) Despite this argument, BellSouth further argues that this measurement is covered by a BellSouth SQM. (*Id.*) Not only are BellSouth's arguments inconsistent, there is nothing improper about requiring that BellSouth provide a report based in part on data provided by CLECs. CLECs will provide the information and the Authority will consider the report for purposes of determining whether BellSouth meets the Act's requirements for nondiscriminatory access. (Kinard Rebuttal at 9.)

11. Percentage of Missed Mechanized INP Conversions

BellSouth's position is that this measure is no longer necessary because permanent LNP is now being implemented for much of Tennessee. (Coon Direct at 51.) While no metric of INP *provisioning* may be required if BellSouth has implemented LNP statewide, BellSouth's proposal does not cover BellSouth's conversions of INP-serviced customers to LNP-served customers. (Kinard Rebuttal at 9.)

12. Average Days Required to Process a Request

According to BellSouth, "just doesn't warrant inclusion in the final performance measures." (Coon Direct at 49.) BellSouth argues that this measurement does not relate to a "problem area"—access to Rights of Way requests. (*Id.*) Contrary to BellSouth's assertions, CLECs believe this measure is important and the Authority has agreed that it is important, ordering its incorporation its decision in the ITC^DeltaCom arbitration. The Coalition would encourage the Authority to keep this metric in its plan.

13. Average Delay Days for NXX Loading and Testing

BellSouth argues that this metric should be deleted because it is duplicative of BellSouth's Percent NXXs and LRNs Loaded by the LERG Effective Date. (Coon Direct

at 51 - 52.) The metrics are not the same, however. Average delay days captures *how late* BellSouth is when it misses the LERG effective date, while the SQM metric indicates only the percent loaded on time, without capturing how late the late loadings were. (Kinard Rebuttal at 10.) BellSouth admits this difference between these two metrics. (Tr. Vol. I-D at 281.)

14. Mean Time to Repair NXX Trouble Reports

As noted by BellSouth, this metric was deleted in Texas to accommodate special access reporting because there is not a lot of activity in this area. This report would be valuable in Tennessee, however, in that it would show the accuracy of BellSouth's NXX loadings, complementing the metric on the timeliness of such loadings that already is part of its SQM. (Kinard Rebuttal at 10 – 11.)

15. Bona Fide Requests Processed Within 30 Business Days and Percentage of Quotes Provided for Authorized BFRs Special Requests Within X (10, 30, 90) Days

BellSouth argues this measurement should be deleted because “there simply is not much activity to measure.” (Coon Direct at 53 – 54.) Whether order volumes are high for BFRs or not, CLECs consider this an important metric. Low volumes may be due to CLEC frustration with lack of responsiveness or the lengthy process imposed by BellSouth for BFRs. The permutation statistical test can be used on sample sizes as small as one (1) to determine whether parity exists. The CLEC Coalition would not be opposed to a quarterly reporting of this metric until volumes increase. (Kinard Rebuttal at 11.)

Additional CLEC Coalition-Proposed Metrics:

Additional metrics advocated by the CLEC Coalition that BellSouth also proposes to include are not discussed in this section. A list of metrics that are additional to those already ordered by the Authority and that are agreed by all parties is set forth in Mr.

Coon's rebuttal. (Coon Rebuttal at 56 – 57.)

1. Additional Ordering Measures

Timeliness of Response to Request for BellSouth-to-CLEC Trunks

OP-Mean Time to Provide Response to Request for BellSouth-to-CLEC Trunks

OP-Percent Responses to Requests for BellSouth-to-CLEC Trunks Provided within 7 Days

OP-Percent Negative Responses to Requests for BellSouth-to-CLEC Trunks

These measures deal with BellSouth having sufficient trunk capacity from the BellSouth network to the CLEC switch when the CLEC's traffic is increased substantially. A CLEC cannot expand without adequate trunk capacity inbound from the ILEC as well as outbound to the ILEC. (Kinard Direct at 21 –22.) ILEC delays in providing reciprocal trunks or delays in providing CLECs a due date for such trunks forces CLECs to delay installing new customers. ILEC delays on trunk resizing prevent CLECs from increasing market share. (*Id.* at 22.)

BellSouth summarily dismisses these measures, suggesting that these issues are better resolved through accurate CLEC forecasts of traffic requirements. (Coon Rebuttal at 58.) BellSouth's response is unrealistic and, at best, not pro-competitive. Accurate forecasting by the CLEC will not prevent BellSouth from rejecting CLECs' requests for augments. BellSouth adheres to an outmoded policy that trunk augmentation of a final trunk group should begin when utilization reaches 75-85%. (Kinard Direct at 22.) CLECs' growth is more dynamic than BellSouth's and a 50% fill can quickly move to blocking levels with the addition of one large customer. (*Id.*) The problem is not that CLECs need to improve traffic forecasts; rather, it is that BellSouth's ability to severely hinder CLEC market growth through slow provisioning of inbound trunks, including the sending of the initial request for such BellSouth-to-CLEC trunks, requires an enforcement mechanism. The measures proposed by

the CLECs would capture BellSouth's performance and motivate improvement. States outside of the BellSouth region (New York, Pennsylvania and New Jersey) include a measurement for the time it takes to respond to CLECs' requests for Verizon-to-CLEC trunks.

OP-Call Abandonment Rate – Ordering and Provisioning
MR-Call Abandonment Rate -Maintenance

These measures monitor BellSouth's handling of support calls from CLECs, when CLECs experience operational problems dealing with ILEC processes or interfaces. (Kinard KK-C at p. 3.) Prompt responses from the ILEC ordering and provisioning support centers are needed to ensure that the CLEC customers are not adversely affected, because any delay will adversely affect CLEC retail customers who may be holding on-line with the CLEC customer service agent. (*Id.*) BellSouth's O-12, Speed of Answer in Ordering Center, does not capture the full abandonment time. It is important to capture how long CLECs are on hold, including the time when calls are abandoned, to provide a true picture of when customers or CLECs may get frustrated with the hold times.

2. Additional Provisioning Measures

OP-Percent Completions/Attempts without Notice or with Less Than
24 Hours Notice

This metric relates to the situation in which a CLEC did not receive a confirmation on a due date or received it only 24 hours in advance. (Kinard KK-C at p. 4.) Late confirmations from BellSouth force CLECs to scramble at the last minute to try to meet the looming due date, if it can be met at all. Customers and CLECs may be unable to schedule necessary vendors to complete the installation, resulting in customer frustration with the CLEC. The CLECs propose this measure so that ~~the~~ customer not ready ~~situations~~ due to

late/no notice from BellSouth can be highlighted, and BellSouth's performance can be monitored and corrected.

BellSouth suggests that this measure is unnecessary because the same information can somehow be obtained by combining several of its provisioning measurements (Coon Rebuttal at 59 – 60.) None of the metrics noted by BellSouth “Firm Order Confirmation Interval, Order Completion Interval, Total Service Order Cycle Time, and Percent Missed Installation Appointments,” however, covers the situation where a CLEC fails to receive a FOC.

Even in those instances where a FOC is received, the data suggested by BellSouth will not reveal whether a FOC was delivered 24 hours before the due date. Both Georgia and Florida have required implementation of this metric. (*See Florida Order* at 14 – 15.)

OP-Percent On-Time Hot Cut Performance

Customers must not be subjected to unscheduled service disruptions because of lengthy or uncoordinated cutovers of loops. (Kinard KK-C at p. 5.) An early cut of facilities can cause the customer to lose service, and a late cut translation often means the customer cannot receive all calls or certain incoming calls. (Kinard Direct at 23.) Either is harmful to customers and CLECs' reputations. Although BellSouth has proposed similar measures (P-6: Coordinated Customer Conversion Interval, and P-6A: Coordinated Customer Conversions – Hot Cut Timeliness % Within Interval and Average Interval), under BellSouth's proposal, BellSouth is considered to have met its metric if it starts within 15 minutes of its start time. (Coon Rebuttal at 61.) Under the CLECs' proposal, BellSouth is measured by whether it is started *and completed* within the specific cut over window. (Kinard KK-C at p. 5.)

OP-Percent of Orders Cancelled or Supplemented at the Request of the ILEC

This metric captures the situation in which BellSouth requests that a CLEC extend a due date to adjust for BellSouth-caused failures to complete the order. (Kinard KK-C at p. 6.) IN such an instance, what would have been a missed due date becomes a new date for the future. (Kinard Direct at 24.) BellSouth can end up meeting the measure, but the new due date masks the fact that BellSouth missed the original one. New York adopted this metric to provide the full picture of Bell Atlantic's performance.

OP-Percent of Coordinated Cuts Not Working as Initially Provisioned

This metric captures when loops are provisioned on time but are not working. Often CLECs cannot log a trouble report until the order is completed in the ILEC's billing system, which may take hours or days. Consequently, these provisioning troubles are undetectable by BellSouth's current performance measures. (Kinard Direct at 24.) This metric is necessary to track how BellSouth performs its coordinated cutovers. Without it, it will appear that all loops BellSouth provisions on time are working when in fact, they may not be.

BellSouth claims that this metric is not needed because it is addressed in P-6C – Percent Installation Troubles within 7 Days.✘ (Coon Rebuttal at 62.) Yet that metric only captures those troubles that occur after the order has been completed. It does not show whether the order was completed correctly and in working condition, as does the CLEC-proposed metric.

OP-Mean Time to Restore a Customer to the ILEC OP-Percent of Customers Restored to the ILEC

These metrics measure the speed of restoring service to BellSouth when a customer conversion fails and the percent of accurate port-backs to BellSouth when necessary. (Kinard Direct at 25.) These metrics are necessary to provide an accurate picture of the magnitude of customers affected that had to be restored to the ILEC as well as how long it took.

Percent Successful xDSL Loops Cooperatively Tested

As the evidence demonstrated, xDSL loop delivery is comprised of two separate and equal components: whether the loop was delivered on time and whether it was working when delivered. (Tr. Vol. III-D at 246) To test these two components of xDSL loop delivery, the CLECs propose both that the Authority measure whether BellSouth participates in Joint Acceptance Testing and whether BellSouth's loops pass that joint acceptance testing on time. Participation in testing is important, but the real question is how many of the loops **pass** the joint tests conducted between a CLEC, like Covad, and BellSouth. The way to insure that these loops pass testing is to define a successful xDSL cooperative test as one in which the CLEC accepts the loop from BellSouth. The CLECs have proposed a measure makes it clear that BellSouth must both test the loop and pass the test to receive a successful report on that metric.

BellSouth takes the position that it intends its P-7 Cooperative Acceptance Testing - % of xDSL Loops Tested to test whether the loop passed cooperative testing, but the metric does not say that. (Coon Rebuttal at 65.) In fact, in SEEM Disaggregation - Analog/Benchmark section, BellSouth proposes that it pay Tier II penalties if it fails to meet the benchmark of "95% of Lines Tested." Thus, BellSouth will test the lines, but makes no commitment to pass the tests or record the installation as a failure. BellSouth seems to believe that its metric captures whether an xDSL loop is tested and passes the testing, but clarification needs to be made to the BellSouth metric. The CLECs propose the following additions to P-7: (1) In the Definition Portion, add "A loop will be considered successfully cooperatively tested when both the CLEC and ILEC representative agree that the loop has passed the cooperative testing"; and (2) In the SEEM Analog/ Benchmark,

replace “95% of Lines Tested” with “95% of Lines Tested Successfully Pass Cooperative Testing.” These adjustments are necessary to capture the appropriate data in this measure.

In Florida, BellSouth agreed to modify its proposed metric to address CLEC concerns about deficiency in the information it would otherwise provide:

At the hearing, whether BellSouth’s current metric was measuring only successful tests or measuring all tests conducted was debated. BellSouth witness Coon clarified that this measure was in fact the same as the measure the ALECs were requesting. BellSouth stated that it would be willing to make adjustments to its proposed SQMs to ensure that it was clear that the loop had to be successful from both the ALEC and the ILEC points of view. We find such clarification necessary. Accordingly, the following changes shall be made: (1) In the Definition Portion, the following sentence shall be added “A loop will be considered successfully cooperatively tested when both the ALEC and ILEC representatives agree that the loop has passed the cooperative testing”; and (2) In the SEEM Analog/Benchmark, the phrase “95 percent of Lines Tested” shall be replaced with “95 percent of Lines Tested Successfully Passing Cooperative Testing.” (*Florida Order* at 13.)

Such clarification of BellSouth’s proposed metric should be made in Tennessee as well or the CLEC proposed metric adopted.

OP- (disaggregation or new metric) - Percent Completion of Timely Loop Modification/Conditioning on xDSL loops

Incumbent local exchange carriers such as BellSouth regularly perform maintenance and provisioning on their outside plant facilities, including placing and removing certain devices from those loops, such as load coils and excessive bridged tap. As the Authority is aware, some loops require modification or conditioning before they can be used to provide a customer with xDSL service. This metric measures BellSouth’s timeliness in making the needed modifications or performing the necessary de-conditioning. (Kinard Direct at 26.) Because xDSL is a growing area of service for CLECs and BellSouth, it is important that BellSouth modify and condition loops in a timely manner. (*Id.*) The CLEC Coalition proposes that this separate metric measure BellSouth performance in this area, because none

of the existing SQM metrics captures the appropriate information.

As the testimony illustrates, BellSouth will develop its methods and procedures to fit whatever time frame for conditioning this Authority orders. During negotiations with Covad, for example, BellSouth proposed that it be allowed up to 30 days to condition a loop. (Allen Direct at 10.) After the Georgia Commission ordered BellSouth to deliver conditioned loops in 14 business days, suddenly BellSouth decided that it could do the work in 14 days. Now, BellSouth's own proposal incorporates a proposed 14 business-day interval for delivering conditioned loops. In other words, BellSouth will deliver loops in whatever intervals are required by this Authority. From a parity perspective, it is important to note that many BellSouth retail services also require conditioned loops, including DS-1 and ISDN circuits. For its retail customers, BellSouth has a single delivery interval, irrespective of whether the loops require conditioning or not. A BellSouth DS-1 customer is not told that 7 days will be added to his order because BellSouth must perform some routine maintenance on his loop. But that is exactly what BellSouth proposes for CLECs in Tennessee. Because of this inherent inequity, the Authority should shorten the interval allowed for delivering a conditioned loop to 5 business days.

BellSouth has argued that that loop conditioning is included within its Order Completion Interval measurement (BellSouth P-4). (Coon Rebuttal at 66.) Yet that metric measures the time from the issuance of a firm order confirmation (FOC) with a delivery date to the time when the order is closed, indicated that the loop has been provisioned. (Tr. Vol. II-A at 19.) In the experience of CLECs, loop modification/conditioning is performed during the service inquiry processes, before the FOC is delivered to the CLEC. (Allen Direct at 12.) Thus, the BellSouth measurement P-4 does not measure the process BellSouth actually has in

place for loop conditioning. Rather, it will supposedly measure the process BellSouth claims it will use in the future. (*Id.*)

The CLEC measure on this issue is critical to the CLEC Coalition members. CLECs and BellSouth have been discussing this issue since July 2000, during the Georgia Performance Measures hearing. BellSouth has offered no evidence to this Authority that it has changed its process or revised its metric to adequately capture performance on loop conditioning. This CLEC-proposed metric with a benchmark of five days in which that conditioning should be performed provides three important benefits for DSL providers in Tennessee. First, it gives a firm benchmark in which DSL providers can tell customers their loop will be conditioned and delivered. Second, it enables DSL providers to measure whether BellSouth is meeting this commitment. Third, it gives this Authority an opportunity to review BellSouth's performance for competitors in routine maintenance tasks that are performed every day for BellSouth's own facilities and for BellSouth's own retail customers. Loop conditioning should be one of the areas in which this Authority can most accurately assess whether BellSouth's treatment of competitors is non-discriminatory since the exact same work is routinely conducted in BellSouth's outside plant for its own retail services.

Florida recently sided with the CLECs on this issue and found as follows: "As an alternative to the disaggregation for loop conditioning for Percent Missed Installation Appointments, BellSouth shall establish a separate measurement for loop conditioning." (*Florida Order* at 15.)

3. Additional Billing Metrics

BL - Percent Billing Errors Corrected in X Days

Percent Billing Errors Corrected in X Days would assess whether errors in

BellSouth's daily usage file and carrier bills are corrected within a reasonable time. BellSouth delays in providing adjustments to carrier bills or correct daily usage feed errors can harm the CLEC and its customer in several ways. Errors that do not get corrected promptly in the daily usage file lead to CLECs either holding up charges or passing on incorrect charges on to the customer. (Kinard Direct at 26 – 27.) The CLEC must then expend its resources to later adjust customer invoices. BellSouth concedes that its invoice accuracy measure does not capture whether errors are corrected within a reasonable time. (Tr. Vol. I-D at 289.) Without this metric, there is no way to ensure that when CLECs ask for an adjustment because of errors in the bill, it is done in a timely manner.

The Florida Commission has recently ordered implementation of this metric, finding:

. . . this proposed metric would capture how quickly BellSouth corrects errors. While there are existing measures to capture billing timeliness and billing accuracy, none of the measures capture how quickly errors are fixed. We agree that this metric shall be added. (*Florida Order* at p. 17.)

The Authority should require the implementation of this metric as well.

BL- Percent On-Time Mechanized Local Service Invoice Delivery

This metric would monitor BellSouth's performance in successfully transmitting invoices to the CLEC in a timely manner. In addition to being complete and correct, the formatting of bills must follow appropriate industry standards so that they can be electronically processed in the CLEC systems. (Kinard Direct at 27.) Without properly mechanized bills, CLECs may be forced to reconcile boxes of paper bills for charges that cannot be accepted or audited by their electronic systems. (*Id.*)

4. Other Additional Measures

MI - Percent Response Commitments Met On-time

Even more important than how quickly BellSouth representatives answer the phone

is how quickly they answer questions or resolve problems. CLECs should not have to wait days for BellSouth to respond to a problem that has stalled production of orders for the CLEC. The metric would measure the timeliness of BellSouth representatives in answering questions or resolving problems asked by CLECs. (Kinard Direct at 27.)

BellSouth disagrees with the need for this metric and believes this issue would be better addressed through individual, contract negotiations rather than developing a group of measures for all CLECs. (Coon Rebuttal at 66 - 67.) The CLEC Coalition could not disagree with this approach more. The purpose of this proceeding is to establish comprehensive metrics to evaluate BellSouth's performance. Responsiveness of BellSouth representatives to CLEC inquiries about items such as missing notifiers is crucial to CLECs. (Kinard Direct at 27.) Verizon's problems in this area led to the introduction of a three-day standard for resolving such requests in the New York metrics.

CM - Percent ILEC vs. CLEC Changes Made

BellSouth has included metrics covering the timeliness of Change Management Notices and Documentation in the OSS test SQMs. As Exhibits KK-A and B to witness Kinard's direct testimony explain, there are many deficiencies with the business rules in the February 2001 revised SQM. Most significantly, BellSouth has not yet included a metric in its SQM that tracks whether it responds fairly to CLEC requests for changes and new functionalities on its interfaces. While CLECs prioritize the change requests, BellSouth implements these changes whenever it chooses (if ever), and it ignores the prioritization. (Kinard Direct at 30.) CLECs have noted problems in getting their change requests included on BellSouth's implementation schedule for software changes.

BellSouth is extremely critical of this proposed metric, alleging that the CLECs' request for a metric that evaluates the efficacy of the Change Management Process would produce "absolutely no useful information." (Coon Rebuttal at 68.) The CLEC Coalition not only believes that a metric can be crafted that measures whether BellSouth responds fairly to CLEC requests for changes and for new functionalities, but that such a metric is necessary for the continued development of local competition. BellSouth witness Pate asserts that, since all changes made are for the benefit of CLECs, basically prioritization is irrelevant. (Tr. Vol. I-B at 101.) This could not be further from the truth when change requests prioritized as the top priority by the consensus of CLECs participating in the Change Management Process languish for, literally, **years**.

The bias of BellSouth's change control process against implementation of CLEC change control requests is one of the most damaging to CLEC market entry and expansion to new states. CLECs have proposed a new metric and plan to make this one of their most important issues in the Georgia six-month review collaboratives.

The Authority has indicated a reluctance to consider change management, generally, in this docket, though it is not clear whether change management metrics are to be considered in this proceeding. If the Authority believes that the metric proposed by the CLEC Coalition needs to be further refined to produce meaningful results, the CLEC Coalition would urge the Authority to work with the parties to develop a meaningful metric to evaluate change management, either in a later phase of this proceeding or in a separate proceeding. Alternately, the Authority could explicitly allow CLECs to propose in Tennessee what eventually may come out of the Georgia review for, hopefully, rapid inclusion in Tennessee's approved metrics.

OSS- Percent Software Certification Failures

CLECs must know that existing systems still will be able to function when BellSouth introduces software upgrades. (Kinard Direct at 30.) This measurement provides some assurance that BellSouth will sufficiently test before a system is rolled out. Knowing that software upgrades will not negatively impact CLEC systems will eliminate potentially costly delays to CLECs and BellSouth. (*Id.*)

OSS- Software Problem Resolution Timeliness

OSS- Software Problem Resolution Average Delay Days

These metrics examine how quickly BellSouth corrects software errors caused by changes to an existing interface, establishment of a new query type or other changes. (Kinard Direct at 31.) BellSouth claims that this measure is unnecessary because the testing arrangements made available with any software update are adequate to resolve these issues before the software is loaded and that the change management process will eliminate the need for this measure. (Coon Rebuttal at 69.) The change management process, however, cannot prevent failures or problems prior to implementing a software program or software change and there is no assurance that BellSouth will follow such processes. The only way to prove BellSouth's theory is to test it -- metrics will show whether systems are tested and problems resolved quickly. The Georgia Commission has required BellSouth to add a Software Error Correction timeliness metric and the New York and Texas plans also include such a metric.

ISSUE: **APPROPRIATE BUSINESS RULES, EXCLUSIONS,** **CALCULATIONS, LEVELS OF DISAGGREGATION AND** **PERFORMANCE STANDARDS FOR EACH METRIC**

In addition to establishing the right metrics, setting the right business rules and standards is critical to developing a good performance plan. To properly assess the service

BellSouth provides CLECs compared to that it provides its retail customers and affiliates, the metrics must be documented in detail such that it is clear what will be measured, how long it will be measured and in what situations a particular event may be excluded from monitoring. Sufficient disaggregation of measurement results is also needed to allow “apples to apples” comparisons in that only results for similar operational conditions will be compared and the results will not mask discrimination. Also imperative to a successful plan are pre-specified, pro-competitive performance standards for retail analogs and establishment of benchmarks where no retail analog exists.

Several of BellSouth’s Measures Are Inadequately Defined.

Each measurement begins with a definition which briefly describes what the measurement is designed to measure. Business rules are the heart of each measure, stating the start and stop time of each metric and providing details necessary to describe the processes in between. (Kinard Direct at 31.) The business rules need to be structured to ensure that BellSouth discrimination is not being masked. (*Id.*) Misleading results can flow from poorly defined metrics. A simple example is where a metric provides an interval of “thirty days,” but BellSouth may calculate the metric based on thirty *business* days, regardless of whether the original intent was thirty calendar days, if not specified just that way in the explanation of the metric. This provides BellSouth (significantly) more time to meet the metric than was originally contemplated, resulting in an appearance of better performance than that which is actually provided. Sometimes there are legitimate reasons to provide exclusions to the defined business rules. These should be easy to understand. Appropriately defined business rules, exclusions and calculations are essential to a good performance measurements plan.

Proper definitions, business rules and exclusions are fundamental. For example,

BellSouth has proposed two similar measures, CM-5, Notification of CLEC Interface Outage, and MNR-7, Mean Time to Notify CLEC of Network Outages. (Coon Direct DAC-1 at p. iv.) The problem with these metrics as proposed is that the time it takes BellSouth to verify such an outage is not included in the metrics themselves. (See Kinard Direct KK-B at pp. 3, 4.) Indeed, none of BellSouth's measures captures the amount of time it takes BellSouth to verify either of those types of outages. Since the hearing in Tennessee, KPMG in Florida has issued an exception on the lack of definition of what the word "verified" means in this context, highlighting another cloudy area among BellSouth's definitions.

The lack of adequate business rules and definitions undermines the intent of any metric. For example, BellSouth has finally agreed to incorporate an Order Accuracy metric that evaluates the accuracy of BellSouth representatives when they enter orders for CLECs for non-mechanized and partially mechanized orders. Unfortunately, however, details are scanty about how the accuracy of orders will be measured. BellSouth purports to explain how this metric will work in Exhibit Coon DAC-R3 (filed with rebuttal testimony) but this document does not have sufficient information to permit an informed review. Indeed, it is not clear that BellSouth knows exactly what it is proposing with this metric.

- A. Is it true that BellSouth only intends to provide the information on a regional basis starting with an average of three states?
- B. No. That -- that had been discussed back about two or three months ago, but our proposal now is to do it regionally with a sample from all nine states.¹
- Q. How would a sampling be done?
- A. I don't know.
- Q. Do you intend to provide more information on what BellSouth would

¹ Interestingly, since the date Mr. Coon answered that question in Tennessee (August 20, 2001), the same question was asked of Mr. Varner (BellSouth's expert on the same subject matter in several other states) on the stand in Kentucky on September 24, 2001 (transcript not yet available). Mr. Varner confirmed the three state sample process and even offered that the states that would be sampled for the region would be Georgia, Florida and Kentucky. It remains unclear which BellSouth witness answered this question correctly.

- propose for percent order accuracy in this docket?
- A. In this docket, no. But could you tell me what additional information you might be talking about?
- Q. Well, how that metric is going to be developed.
- A. If the Authority should order this particular metric, we could certainly provide more information or more detail about how it would be developed.

(Tr. Vol. I-D at 286 – 287.) This sort of vague explanation does not permit the Authority or CLECs to know what will be measured or how or whether the metric is of any value at all as proposed.

Another example demonstrates how exclusions must be carefully scrutinized. BellSouth has proposed a 10-hour benchmark for O-8, Reject Interval for Partially Mechanized Orders (down from their originally proposed 24 hours), but after-hours time is specifically excluded. (Coon Direct DAC-1 at pp. 2-19 – 2-21.) A 10-hour benchmark with an after-hours exclusion is far too long. Rejections for partially mechanized orders should be received in five hours.

There are many problems with BellSouth's definitions, exclusions, business rules, and calculations. The results of the CLEC Coalition's scrutiny of BellSouth's proposed business rules, exclusions, and calculations for BellSouth's proposed measures in this proceeding are found Kinard Direct Exhibits KK-A, KK-B, KK-D and KK-F. The appropriate business rules, exclusions and calculations for the CLECs' proposed measures are described in detail in Kinard Direct Exhibits KKA, KK-B, KK-D and KK-F. For the reasons outlined above, to foster local competition, the Authority should approve the CLEC Coalition's proposal and modifications, because they are more comprehensive and meaningful than BellSouth's.

DISAGGREGATION

The CLEC Coalition proposes that the Authority require BellSouth to provide a

level of disaggregation such that deficiencies in BellSouth's performance can neither be masked nor ignored. Disaggregation should be required by interface type, pre-order query type, product, service order activity, volume category, trouble type, trunk design and type (for trunk blockage measurements), maintenance and repair query type and collocation category. (Kinard Direct at 34 – 38.) Kinard Direct Exhibit KK-E provides in-depth details regarding the CLEC-advocated appropriate levels of disaggregation.

Disaggregation is key to obtaining an accurate snapshot of BellSouth's performance, because poor performance in particular areas can be masked when grouped into one large report. BellSouth has proposed a total of 1200 submetrics for CLECs. (Coon Rebuttal at 86.) The CLEC Coalition has proposed some 2800 submetrics. (Tr. IV-A at 49.) BellSouth disputes that number, and claims that the CLECs are actually demanding 400,000 submetrics. (Coon Rebuttal at 82.) The difference in the parties' positions as to the total number of disaggregations sought by the CLECs appears to be based on whether, as BellSouth alleges, disaggregation as proposed by the CLECs *necessarily* involves all product types for *all* metrics, as well as all geographic areas (separated by Metropolitan Statistical Area, or "MSA") in Tennessee, or whether CLECs are, as they insist, asking for disaggregation *only* for certain product types for certain metrics, and for *only* those geographic areas in which CLECs are operating. As discussed in more detail below, the CLECs question BellSouth's assumption that CLECs are presently operating in all geographic areas of the State, and base their requests for disaggregation on what is undeniably an evolving market and field of expertise in ascertaining, from the standpoint of regulatory commissions as well as the industry, the levels of disaggregation that are needed to provide useful comparisons.

Useful levels of disaggregation should cover all of the products CLECs purchase when there is large-scale entry in both the residential and business markets. Reporting should categorize the information by product type, to identify with specificity the services provided by BellSouth. Examples of product disaggregation include: resale, UNEs and trunks broken down by residential and business customer where appropriate. Further disaggregation for resale and UNEs include DS1s and DS3s, and separating BRI ISDN from PRI ISDN. Unbundled loop types, such as analog voice-grade loops, digital loops, ADSL loops, HDSL loops, unbundled copper loops (“UCLs”), and other xDSL loops, should be disaggregated because BellSouth’s performance will vary for each loop type. (Kinard Direct at 34 - 35, Kinard Rebuttal at 13.)

Product Disaggregation: xDSL

The Authority should require BellSouth to disaggregate its various xDSL products, since they cover different service lengths and different provisioning processes. DS1 loops should not be included with DS3 loops because BellSouth has different intervals for DS1 and DS3 loops. (Kinard Direct at 36, Allen Rebuttal at 16 – 17.) Also, line splitting should be disaggregated from line sharing in order to detect discrimination when the ILEC is not the voice provider of the loop; i.e., to ensure that BellSouth is not favoring those data providers that use its voice services over those who use other voice providers. (Kinard Direct at 35.) For line splitting or line sharing, data carriers need to ensure that they are receiving the same treatment as BellSouth’s data services affiliate, so that they need to have their performance compared to that provided by the affiliate on a product by product basis.

One of the reasons disaggregation is necessary is to capture whether BellSouth has

met its own “target” loop delivery intervals for a variety of products. For example, BellSouth now offers both designed and non-designed xDSL loops. The designed loops (like the ADSL, HDSL, UCL) go through the extensive and expensive “designed loop” process at BellSouth. For these loops, BellSouth’s “target” loop delivery interval in its product and services guide is 5 business days. The new Unbundled Copper Loop Non-Designed is supposed to be provisioned in the same way as the SL1 voice grade loop. Thus, it is less expensive and should take less time to provision. BellSouth’s “target” loop delivery interval is 4 business days. Nonetheless, with the disaggregation BellSouth proposes, designed and non-designed xDSL loops would be lumped together. That does not adequately capture and reflect performance for CLECs.

Moreover, BellSouth’s plan uses disaggregation to shield poor performance from penalties. As Covad witness Allen testified, BellSouth has proposed that it will report how it provisions ISDN to retail compared to how it provisions UDC/IDSL compatible loops to CLECs. (Allen Direct at 18.) The UDC/IDSL loop is nothing more than an ISDN loop provisioned to insure that it will support a certain type of DSL service. Covad uses these loops for about 30% of its orders, since IDSL service is the only service that can be provided to customers who have fiber-fed loops or to customers who live more than 18,000 from the central office. (*Id.*) BellSouth agrees that it should report whether it is provisioning these identical loops at parity. However, when it comes to Tier I penalties, BellSouth proposes that its performance provisioning IDSL loops be lumped together in the category of UNE Loops and compared to Retail Residence and Business Dispatch. Covad has experienced abysmal performance by BellSouth on IDSL loops, but BellSouth’s proposal for penalties ensures it will never have to pay penalties as a result of that

performance. By lumping a loop with a 10 business-days delivery interval together with SL1 loops that are delivered in 4 days, BellSouth can hide a lot of poor performance through inappropriate aggregation of results. (Allen Direct at 18)

Product Disaggregation: UNE-P

UNE-P is unique from other UNEs and requires specific, unique performance measures. (Kinard Direct at 36, Tr. V II, Page Direct at 6 – 9.) The UNE Platform combines a loop with switching and transport and is different than merely ordering a loop without the switching and transport. Rodney Page of ACCESS testified to numerous areas where UNE-P providers experience unique problems with BellSouth. (See Tr. Vol. III-C at 144 - 145.) When UNE-P results are mixed with UNE products that may have significantly higher volumes of orders, the UNE-P specific results are lost, reducing the ability, at the aggregate level, to measure whether parity exists for UNE-P providers. (Sauder Direct at 8.) Appropriate disaggregation permits both the regulator and the CLECs to see exactly where particular problems lie.

Provisioning/Maintenance/Repair Disaggregation:

Lumping together different kinds of problems leads to meaningless results. In contrast, disaggregation by trouble type can highlight a repetitive problem and lead to a prompt and lasting resolution. (Kinard Direct at 38.) Thus, the CLEC Coalition also highlighted additional areas of concern regarding BellSouth's proposed disaggregation levels for the type of work performed. Provisioning and repair measures should be divided into three categories: 1) switched-based orders; 2) central office or "dispatch in" orders; and 3) field work or "dispatch out" orders. (*Id.* at 39.) For example, data for the mean time to restore service for a trouble requiring dispatch to the customer's premises should

not be included in the same data set as the mean time to restore service for a trouble not requiring a dispatch.

These different types of work activities can require significantly differing amounts of time, and combining them or comparing one type of results to a different type results in misleading information about the amount of time required to perform activities for the CLEC compared to itself. Although BellSouth currently reports by dispatch and non-dispatch activity, it improperly combines dispatch in and dispatch out performance that can mask non-parity performance. BellSouth should be required to cease its current discriminatory reporting practices and report data for itself and the CLECs as follows, software changes, dispatch in, and dispatch out. (*Id.* at 39.)

Other Types of Important Disaggregation:

Pre-order query type disaggregation is also important because a request for something simple like a phone number may require less response time than a request for something more complex, like a due date reservation or loop makeup information. Disaggregation for response time for error messages and percent time outs also should be included. (Kinard Direct at 35 – 36.)

Volume category disaggregation captures differences that may arise based on, for example, the number of lines being ordered. CLECs recognize that the appropriate interval for a particular metric may depend on whether, say, five or fifty lines are being ordered. (*Id.* at 37.) The CLEC Coalition recommends that BellSouth disaggregate by volume in accordance with the differing intervals it requires for various volumes. If the interval is, for example, different for 1-5 lines than it is for 6-10 lines, then BellSouth should disaggregate its performance based on those volumes. To do otherwise would mask how

long it actually takes to provide service, and makes comparisons to BellSouth's service provision to its retail customers meaningless. (*Id.*)

Aggregating trunks designed at different blocking thresholds could hide serious blocking problems by averaging trunks designed to block at 2%, 1%, or 0.5% together. (Kinard Direct at 37 – 38.) Disaggregation by type is also important so that blocking on OS/DA or 911 trunks can be monitored by CLECs. BellSouth should disaggregate final dedicated trunks by the following trunk types and industry blocking standards: Trunk Type (OS/DA; 911); Trunk Performance (2% Local and IntraLATA Toll Trunk Groups; 1% Local Tandem, Local Direct Office Final, IntraLATA interexchange, 911, DA, DA Call Complete; 0.5% OS, IntraLATA Tandem Meet Point). (*Id.*)

Maintenance and repair query type disaggregation is important for the same reasons as pre-order query type disaggregation. Different types of queries can be expected to take different lengths of time to process. (*Id.* at 38.)

Different types of collocations and augments take different amounts of time to provision and should be disaggregated. For example, provisioning a cageless collocation space should require substantially less time than provisioning a caged collocation space. Augments of collocation space also should generally take less time than installing the original collocation space. (Kinard Direct at 38, Tr. I-D at 250.)

Various CLECs have become concerned about the time it takes BellSouth to convert special access circuits to extended efficient links (“EELs”). The standard interval for migrations from special access to EELs should be 95% within 10 days from receipt of an error-free request for conversion. The benchmark for firm order confirmation timeliness and completion notices should be 95% in 5 hours for electronic and 24 hours for

manual for each metric. (Kinard Direct at 40.) CLECs also seek measurement of how quickly BellSouth would change billing rates from special access to EELs, proposing a standard of 95% within 30 days from receipt of an error-free order. At the very least, a level of disaggregation to monitor EEL conversions should be measured in Tennessee as well. (*Id.*)

Geographic Disaggregation

As the Authority has ordered in the past on this matter, information should be provided to the Authority that is Tennessee-specific. (Kinard Rebuttal at 12.) In particular, flow through and associated ordering metrics should be provided on a state specific basis, because differences in flow through and order activity need to be viewed by regulators for each specific state, since differences can exist. BellSouth asks the Authority to accept regional data on some of the most critical measures, including Percent Flow-Through Summary and Percent Flow-Through Detail. (*Coon Direct Testimony* at pp. 60-61). In all, without any evidence or cost of service studies, BellSouth asks the Authority to not require Tennessee information for twenty-five (25) crucial measures. (*Id.*) The Authority's original decision regarding regional versus Tennessee-specific data should stand.

Within Tennessee, a chief dispute between the CLEC Coalition and BellSouth is whether there should be any geographic disaggregation of Tennessee data. (Tr. Vol. I-D at 251 – 257.) BellSouth contends there should be no geographic disaggregation and that each metric may be reported at the state or regional level. (*Id.*) CLECs propose disaggregation for some metrics at the MSA level. (Kinard Direct at 40 - 41.) BellSouth's position is premised on the assumption that its OSS is regional in nature and, therefore,

differences on the basis of geography have no meaning. Of course, if no data are collected to show otherwise, then BellSouth's position is vindicated. The problem with BellSouth's position is that the Authority, as well as CLECs, will have no access to the relevant retail data to determine when geographical disaggregation makes a difference and when it does not. (*Id.*) Stated differently, if only statewide reporting is provided, CLECs that operate only in discrete areas of the state cannot compare the performance they receive to what BellSouth provides itself in those areas. Because service levels may vary from area to area, CLECs will not be able to determine whether they are receiving parity of service without geographic disaggregation.

If BellSouth could *show* that statewide reporting would not mask discrimination, then the CLECs would not require MSA-level reporting. CLECs are proposing that reporting at a MSA level be done only to the extent that CLECs are presently operating in those areas. (Tr. Vol. IV-C at 174.) CLECs believe at the very least BellSouth can group MSAs or provisioning/maintenance regions of the state into "very competitive", "somewhat competitive" or "little or no-competition" areas. BellSouth currently reports provisioning and repair metrics at an MSA level in Louisiana. (Tr. V I-D at 252.) Moreover, as even BellSouth admits, disaggregation is needed for like-to-like comparisons. (*Id.* at 247.) The geographic disaggregation being sought by CLECs is at the MSA level because CLECs are concerned that if rural and urban, competitive and non-competitive areas of the state are combined, real disparities in performance will be hidden. (Kinard Direct at 41.) Disaggregation by MSA reveals significant geographic discriminatory treatment. If BellSouth believes that disaggregation by MSA is meaningless, it should supply the data for some period to show that it is meaningless.

In the New York Third Party OSS test, KPMG recommended disaggregation for special services for metropolitan New York City from upstate New York because KPMG's study of the data showed differences in performance between Manhattan's highly competitive market and the rest of the state.² (Kinard Direct at 41.) POTs services already were disaggregated into five areas in New York for retail performance reporting and the same areas were adopted for wholesale POTS (resale and UNE-Platform) reporting. Such disaggregation has been vital for provisioning and maintenance metrics. (*Id.*) In addition to Verizon-New York, SBC-Texas, SBC-Ameritech, Verizon-Pennsylvania and Verizon- New Jersey all disaggregate on a geographic basis.

PERFORMANCE STANDARDS

The first step in measuring performance is to determine if there is an analogous process that BellSouth uses or has available for use regarding its retail customers. (Coon Direct at 9.) A retail analog is a service or function that BellSouth provides for itself, its customers or its affiliates that is equivalent to a service or function that BellSouth provides to CLECs. When a BellSouth retail analog exists, BellSouth's performance for itself, its customers and its affiliates should be compared to its performance for CLECs to determine if BellSouth is meeting the Act's parity requirement.

If no retail analog exists, BellSouth's performance must be gauged by a performance standard, also known as a benchmark. A benchmark is a set level of performance, such as provisioning a particular UNE 95% of the time within three days. *See Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan*, CC Docket 97-

^{9.} "In general, the metrics may be too aggregated, especially with regard to geography. The New York City area appears to get a different level of service than other parts of the state, and CLECs have their business concentrated in this area. The result can be that BA-NY is in parity

137, Memorandum Opinion and Order, FCC 97-137 at ¶¶ 139-41 (rel. Aug. 19, 1997). (Kinard Direct at 44.)

Choosing a retail analog that is not sufficiently like the service or product being measured can make discriminatory performance look like parity. If, for example, a slow process is chosen on the retail side, it masks poor performance on the wholesale side. In instances in which there is no analogous process, the Authority must set a benchmark for determining performance. (Kinard Direct at 44.)

Benchmarks should be based on the level of performance that can be expected to offer an efficient carrier a meaningful opportunity to compete. Benchmarks cannot be based simply on BellSouth's historical performance; i.e., that BellSouth has provided a certain level of service to CLECs in the past does not mean that level of service provides CLECs a meaningful opportunity to compete or to even meet Tennessee's end user standards. (Kinard Direct at 44.)

The CLEC Coalition strongly disagrees with the benchmarks BellSouth has proposed in its SQMs that are below the 95 percent thresholds that have been set in other states, such as New York and Texas, for most metrics except for call center and OS/DA answer times. Often, not only the percentage of timely performance, but also the intervals themselves are set below those adopted in other states. As Birch highlights regarding BellSouth's long confirmation and rejection times for orders that fall to manual and Covad highlights regarding xDSL intervals for Texas metrics, BellSouth's intervals need improvement. (Sauder Direct at 5, 10-11.) BellSouth's trunk confirmation and collocation intervals are excessively long and

overall, but out of parity region by region or vice versa." KPMG Consulting's New York final report released August 6, 1999, p. POP8 IV-20.

need to be tightened up to foster competition in Tennessee. In any event, the shorter the interval for a particular interval, the lower the threshold that would be generally acceptable to the CLECs. (Tr. Vol. IV-C at 145, 148.) As stated so aptly and succinctly by the Florida Commission, “benchmarks set below 90 or 95% do not generally allow the ALECs a meaningful opportunity to compete.” (*See Florida Order* at 139.)

For many of its provisioning and maintenance and repair measures, BellSouth inappropriately compares UNE Loops to retail dispatch services. Clearly physical work done in a central office should not be compared to work done in the field, including at the customer premises. If the provisioning of a UNE loop requires field work as well as central office work, then it would be classified as a dispatch out. Provisioning and repair measures should be divided into three categories: 1) Switch-based orders, 2) central office or “dispatch in,” and 3) field work or “dispatch out.” These are the relevant major categories of disposition codes, in addition to those related to excluded data such as FOK/TOK/CPE, for which CLECs seek disaggregation -- not 145 disposition codes, as BellSouth has misinterpreted the CLEC proposal. (Kinard Direct at 39.)

Some of BellSouth’s proposed standards call into question whether BellSouth is providing non-discriminatory treatment. For example, in BellSouth’s proposed P-4 metric, Average Completion Interval (OCI) & Order Completion Interval Distribution), the period BellSouth measures runs from the time the FOC is provided to the CLEC, to the time of order completion. (Coon DAC – 1 at p. 3-10) For its retail orders, however, BellSouth measures the relevant period from the time an order issues in its SOCS (Service Order Control System). (*Id.*) BellSouth does not provide a FOC to its retail representatives; thus the period it measures for its retail operations is necessarily different from that measured for CLECs. (Tr.

Vol. I-D at 291 – 295, Kinard Rebuttal at 20.)

In some instances, BellSouth has proposed “diagnostic” measures, without retail analogs or benchmarks. For some of these measures, the CLECs do not disagree, but for others, the CLECs believe the Authority should establish a benchmark. For example, BellSouth has proposed the metric O-12, “Speed of Answer in the Ordering Center,” which measures the average time a CLEC is in queue at the LCSC, sometimes with customers on the line. (Coon DAC-1 at p. 2-29.) Because BellSouth has decided to label it “diagnostic,” there is **no performance standard** to which BellSouth is held accountable. (*Id.*) Yet there is no reason for this metric to be diagnostic: the Authority should adopt the CLECs’ proposed benchmark of 95 percent in 20 seconds and 100 percent in 30 seconds.

Furthermore, with respect to benchmarks for xDSL loop delivery, BellSouth has proposed that it be given 7 business days from issuance of the FOC (for loops without conditioning) and 14 business days from issuance of the FOC (for loops with conditioning). As we have noted above, BellSouth’s measurement will not capture its performance of conditioning whatsoever. For loops without conditioning, BellSouth is actually asking for two days longer to deliver a loop than it promises in its product and services guide. BellSouth performance will improve only when this Authority orders that performance to improve. For example, BellSouth only began offering to perform conditioning in 14 days after the Georgia Commission ordered that benchmark. (Allen Direct at 10.) BellSouth’s Product and Interval guides sets the standard interval for xDSL loops at 5 business days from receipt of FOC. So, obviously, BellSouth believes it can deliver loops in 5 days. It just wants to build in a cushion so that it won’t get penalized for bad performance for missing its own “target” loop delivery interval. Whereas other ILEC loop delivery intervals are getting shorter, BellSouth is

actually proposing that its xDSL loop delivery interval be longer. BellSouth wants 7 business days to deliver the loop plus 48 hour to deliver the FOC for a total interval of **9 business** days. BellSouth fails to justify this excessive interval, while admitting it can provision loops in a shorter period and that it should be working to improve loop delivery intervals. (Allen Direct at 4.) No improvement will happen until this Authority orders a reasonable xDSL loop interval of 3 days, or 5 days with conditioning.

Likewise, the CLECs propose that a benchmark be used to measure BellSouth performance on Line Sharing and Line Splitting. Benchmarks enable CLECs to set the expectations of their customers and to manage those expectations to delivery high customer satisfaction. Without a benchmark for penalty purposes, CLECs only have BellSouth “target” intervals to rely upon, and BellSouth freely admits that it is under no compulsion to meet those targets. CLECs request that the Authority establish a three-day benchmark for provisioning Line Sharing and Line Splitting.

Several Specific Benchmark Issues

O-4 - Flow Through

Flow Through measures how many CLEC LSRs pass through BellSouth’s OSS and have a FOC returned without manual handling. The ability of CLECs to place electronic orders that are processed entirely electronically with no manual intervention has a powerful impact on the CLECs’ efficiency in adding new customers and servicing existing customers. Therefore, this measure impacts competition very significantly. When orders fall out for manual processing, BellSouth service representatives must re-type the CLEC LSRs so they can be accepted by BellSouth’s legacy provisioning systems. (Tr. Vol. II-A at 18.) As such, the CLECs’ LSRs are subjected to longer timeframes and greater risk of

human error. (Tr. Vol. I-C at 197 – 201, 210.) Manually processed LSRs also are subjected to a greater risk of errors; for example, given BellSouth's internal two-order ("D" and "N") formatting, which is used to disconnect and then install new service for a single UNE-P (or loop-port combination) LSR, if the "D" and "N" orders generated by BellSouth are not linked by appropriate codes, which must be added manually by BellSouth representatives, there will be a loss of dial tone. (Kinard Direct at 12 – 13.) CLECs, including MCI in its Georgia local residential launch, are already experiencing these problems.

BellSouth proposes that for remedies purposes the flow through measure be based on the eligibility of the LSR to be processed mechanically. If the LSR is not "designed" by BellSouth to flow through, it is excluded from the measurement. BellSouth proposed the benchmarks to be 95% for Resale Residence, 90% for Resale Business, and 85% for UNE orders. (Coon DAC-1 at p.p. 2-9 – 2-10.) Yet if the LSR is designed for mechanical processing, the flow through rate should be much higher.

O-9 FOC Timeliness

The Firm Order Confirmation (FOC) response is extremely important to the CLECs, as it confirms that the order was received and is being processed and provides the date that service will be installed. The CLECs' ability to get a FOC in a timely manner is paramount. To use an example raised by Birch witness Sauder, if an end user wanting new service calls an ILEC's Retail operation, it is Birch's experience that BellSouth can provide a retail end user of an install date within seconds of their placing an order. This is in sharp contrast to the amount of time a CLEC must wait for a response from BellSouth in

order to provide the same information to its end user, which is limited by the standards of the FOC Timeliness Performance Measurements. (Sauder Rebuttal at 3.)

BellSouth has proposed that only 85% of partially mechanized LSRs be returned within 10 business hours (a time that was improved from 24 “business hours” by Mr. Coon on the stand). (Tr. Vol. II-A at 21.) If the standard is set at the BellSouth suggested levels, the end user will not be able to experience parity service. Initially, the end user would have to wait one full “business day” before finding if and when service will be available. As a comparison, Southwestern Bell is held to 95% FOC Timeliness within 5 business hours for all partially mechanized LSRs. (Sauder Direct at 5, 10 – 11.) BellSouth should be held to this same standard.

O-8 Reject Interval

The reject interval is the amount of time that transpires between the CLEC submission of an LSR and BellSouth returning the LSR to the CLEC due to errors. For June 2001, BellSouth’s data show that 26% UNE orders were rejected in the region. (See Hearing Exhibit 6.) A quick return of rejects for correction by the CLEC is critical to competition in Tennessee.

BellSouth’s proposed is a reject interval of 85% of partially mechanized Rejects to be returned to the CLEC within 10 business hours. Under this proposal, BellSouth can wait one full “business day” on 85% of the orders, and even longer on the remaining 15% of the orders, before ever indicating a mistake has been made. (Tr. Vol. II-A at 44 – 46.) This alone will stifle meaningful competition. After correcting the mistake, the CLEC may have to wait another two days or more before learning if the problem has been corrected.

All the while, the end user is left wondering when and if his or her service will be provisioned by the CLEC.

Mr. Sauder testified that the Texas Commission reduced this problem by mandating Southwestern Bell to a standard of 97% partially mechanized Rejects returned within 6 hours. (Sauder Direct at 2 – 3.) In this proceeding the CLEC Coalition's position is that that 95% partially mechanized Rejects should be returned within 5 hours, which the CLECs believe BellSouth should have no trouble meeting.

P-3 Percent Missed Installation Appointments

All parties agree that BellSouth metric on Missed Appointments is intended to capture the first missed appointment. But as BellSouth witness Coon admitted, once the first installation appointment is missed, BellSouth's metric does not capture further performance on installation appointments. (Tr. Vol. III-A at 59 - 61) So, if BellSouth give a CLEC five different installation appointments and misses every one of those appointments, BellSouth only pays penalties on the first missed appointment. That means that, for example, a residential CLEC customer had to take off work 5 times to wait for BellSouth to deliver an xDSL loop. And five times that customer got frustrated and angry with the CLEC. This performance harms CLECs and needs to be captured by the metrics.

BellSouth's position is that the entire amount of time it takes to get a loop delivered would be included in Order Completion Interval (P-4). However, Mr. Coon conceded that if a customer ultimately cancels the order, that order's history (including all missed appointments) is pulled out of the calculation for both Missed Installation Appointments and for Order Completion Interval. CLECs suggest that the following changes to this metric be made to adequately capture the CLEC experience: (1) BellSouth should report

data on every missed appointment, not just the first missed appointment; and (2) Orders that are cancelled before the scheduled appointment may be excluded, but orders cancelled after the scheduled appointment NOT be excluded. This is the most rational way to evaluate whether BellSouth is providing parity service. There is no dispute that, if the order is canceled before the appointment date, the order should be excluded. As the Authority evaluates BellSouth's performance on Installation Appointments, it really does not matter whether the order is canceled at some later time. The only relevant inquiry is whether BellSouth made or missed the installation appointment.

Benchmarks

The Authority should maintain the higher benchmarks it has already established in reliance on what was done in Texas. Similarly, the CLEC Coalition would urge the Authority to adopt 95% or higher thresholds for the additional metrics, as set forth in Kinard Exhibits KK-A, KK-B and KK-C. All benchmarks should be reviewed periodically to ensure that CLECs are given a meaningful opportunity to compete as the industry progresses. (Kinard Direct at 45 – 49.)

ISSUE: AVAILABILITY OF BELL SOUTH PERFORMANCE DATA

Although BellSouth provides raw data for several measures today, in other cases, such as LNP measures, it does not. Further, in other cases BellSouth provides raw data, but not in a manner that allows its meaningful use by the CLEC. For example, while BellSouth provides raw data for its hot cut timeliness measure, it does not provide the Purchase Order Number so that a CLEC can compare its own data to that reported by BellSouth to validate the accuracy of BellSouth's reports. (Kinard Direct at 53.) Other raw data is flawed and thus cannot be used for its intended purposes of validating

BellSouth's performance reports. For example, the raw data for the FOC and rejection measures includes null values and calculated duration intervals, not the raw data to allow the CLEC to validate the reported duration. (*Id.*)

Additionally, access to the raw data used to create performance reports is essential to a CLECs' ability to validate the performance data and reports provided by BellSouth. BellSouth is currently not providing access to raw data for a number of measures such as the following:

Ordering

LNP_PCT_Reject_Interval_Service_Requests_Total_Mech.txt
LNP_PCT_Reject_Interval_Service_Requests_Partial_Mech.txt
LNP_PCT_Reject_Interval_Service_Requests_Fully_Mech.txt
LNP_Reject_Interval_Service_Requests_Total_Mech.txt
LNP_Reject_Interval_Service_Requests_Partial_Mech.txt
LNP_Reject_Interval_Service_Requests_Fully_Mech.txt
LNP_Firm_Order_Confirmation_Total_Mech.txt
LNP_Firm_Order_Confirmation_Partial_Mech.txt
LNP_Firm_Order_Confirmation_Fully_Mech.txt

Provisioning

LNP_Total_Order_Cycle_Time_Mechanized.txt
LNP_Total_Order_Cycle_Time_Mechanized_with_Appointment_codes.txt
LNP_Percent_Missed_Installation_Appointments.txt
LNP_Disconnects.txt

Billing

Invoice Accuracy CLEC (Region)
Mean Time to Deliver Invoices CLEC (Region)
Usage Data Delivery Accuracy CLEC
Usage Timeliness & Completeness CLEC

For many facilities-based CLECs, LNP orders are a critical aspect of their business. By not providing access to LNP raw data, BellSouth prohibits CLECs from validating the reported performance. BellSouth has maintained that its database is about the size of the "entire Internet in 1999." If that is true, it is difficult to understand why BellSouth does not include LNP raw data in PMAP. An effective remedy plan should provide performance reports and the supporting raw data for all measures in the plan. BellSouth's proposal does

not.

BellSouth provides access to data and reports on its PMAP web site. (Tr. Vol. II-A at 5.) Unfortunately, the response times for the web site are slow and CLECs find it difficult to obtain the reports they need one at a time, given that the metrics can only be retrieved one at a time. (Kinard Direct at 53, Tr. Vol. II-A at 5.) BellSouth does not follow the “FCC format” that shows all the metrics together with the performance standards that apply. (Kinard Direct at 53, Tr. Vol. II-A at 7 - 9.) The Authority should require BellSouth to improve the ease of use and responsiveness of its reporting system.

As Florida has ordered, the Authority should require BellSouth to post data and reports for *all approved measures* to its interconnection services web site. (*Florida Order* at 116.) The Florida Commission ruled that these reports should be posted by the thirtieth day after the month in which the reported activity occurs. (*Id.*) The raw data that supports all reports derived from PMAP should also be provided on the web site. Each report should contain the information specified in the BellSouth SQMs “Report Structure” section. BellSouth was encouraged by the Florida Commission to take action to incorporate these measures into PMAP as soon as possible. The Florida Commission indicated that this issue can be revisited during the six-month review period to determine if additional changes should be made. BellSouth was ordered to retain raw data for performance measures for a period of 18 months, and to further retain the monthly reports produced in PMAP for a period of three years. The CLEC Coalition would like Tennessee to require the same of BellSouth.

ISSUE: **THIRD PARTY AUDITS OF PERFORMANCE ASSESSMENT
PLAN DATA AND REPORTS**

The FCC’s order approving Verizon’s 271 application to enter the New York long-

distance market noted that an important characteristic of Verizon's Amended Performance Assurance Plan was "reasonable assurances that the reported data is accurate." *In re: Application by Bell Atlantic New York for Authorization Under Section 271 of the Communication Act to Provide In-Region, InterLATA Service in New York*, CC Docket No. 99-295, Memorandum Opinion and Order ("New York 271 Order"), ¶ 433 (rel. Dec. 22, 1999).

Thus, audits are an integral part of a performance measurement plan designed to ensure BellSouth's compliance with the Act. (Kinard Direct at 47.) BellSouth is the dominant market provider with the incentive and ability to discriminate. To ensure that BellSouth's reporting is accurate and appropriately triggers remedies designed to curb its incentive to discriminate, comprehensive annual audits are critical. (*Id.* at 49.) A comprehensive audit should be conducted every twelve months. A third-party auditor should be jointly selected by BellSouth and the CLECs. If the parties cannot agree on the auditor, the Authority should determine the auditor. (*Id.* at 50.)

The audit scope should be determined in an audit process that is open to CLECs. (Kinard Direct at 49.) Moreover, the audit, which is designed to ensure BellSouth is meeting its legal obligations, should be done at BellSouth's expense. (*Id.* at 49 – 50.) Other states, such as Michigan and Pennsylvania have required this of the RBOC in their states. Recently, Florida agreed with the CLECs that BellSouth should bear the audit costs, saying:

However, we support the ALECs' position that the audit costs should be borne by BellSouth. If the ALECs were to bear fifty percent of the audit costs, the process of identifying which ALECs are to be billed and the amount to be billed to each would be difficult and burdensome. For example, for those performance measures that are only collected and reported at the regional level (nine state region), non-Florida ALECs would derive some benefit. . . . Additionally, since BellSouth controls the accuracy and validity of the performance measures, BellSouth is ultimately

responsible for the outcome of the audit and, therefore, the underlying costs of the audit. Therefore, the cost of third-party audits shall be borne by BellSouth. (*Florida Order* at 183.)

The Florida Commission also found that metrics and reports should be audited at a state level, unless the data is reported and collected at a regional level and the CLEC Coalition believes the Authority should require the same. (*Florida Order* at 182.)

In addition to an annual audit, when a CLEC has reason to believe the data collected for a measure are flawed or the reporting criteria for the measure is not being adhered to, the CLEC should have the right to have a mini-audit performed on the specific measure/sub-measure upon written request (including e-mail), which will include the designation of a CLEC representative to engage in discussions with BellSouth about the requested mini-audit. (Kinard Direct at 50 – 51.) If, thirty days after the CLEC's written request, the CLEC believes that the issue has not been resolved, the CLEC should be able to commence the mini-audit upon providing BellSouth with five business days advance written notice. Each CLEC would be limited to auditing three single measures/sub-measures or one domain area (preorder, ordering, provisioning, maintenance or billing) during the audit year. (*Id.*) The CLECs would pay fifty percent of the mini-audit, which would be reimbursed if the ILEC were found to be at fault. (Kinard Direct at 51 – 52.) Mini-audits could be requested for months including and subsequent to the month in which the KPMG OSS or an annual audit was initiated. Mini-audits would include all systems, processes and procedures associated with the production and reporting of performance measurement results for the audited measure/sub-measure. Mini-audits would include two months of data. (*Id.* at 51.) Mini-audits would be conducted by a third-party auditor, selected by the same method as the annual audit.

If, during a mini-audit, it is found that for more than thirty percent of the measures in a major service category BellSouth is “materially” at fault (that is, a measure reported as successful changes to a missed measure as a consequence of the audit, or there is a change from an ordinary missed measure to intermediate or severe level), the entire service category would be re-audited at BellSouth’s expense. (Kinard Direct at 52.) The major service categories for this purpose would be:

- Pre-Ordering/Ordering
- Billing
- Provisioning - POTS and UNE Loop and Port Combinations
- Provisioning - Resale Specials and UNE Loop and Port Combinations
- Provisioning - Unbundled Network Elements
- Maintenance - POTS and UNE Loop and Port Combinations
- Maintenance - Resale Specials and UNE Loop and Port Combinations
- Maintenance - Unbundled Network Elements
- Interconnection Trunks
- Local Number Portability
- Database - 911
- Database - Directory Assistance
- Database - NXX
- Collocation
- Coordinated Conversions

(*Id.* at 52.) Each mini-audit should be submitted to the CLEC involved and to the Authority as a proprietary document. BellSouth should provide notification to all CLECs of any mini-audit requested when the request for the audit is made. (*Id.*)

BellSouth’s adherence to metric change control policies should also be reviewed, because the lack of follow-through on such policies would thwart the replication of past metric reports. The audit should cover all reporting procedures and reportable data and should include all systems, processes and procedures associated with the production and reporting of performance measurement results. (Kinard Direct at 47.)

A thorough audit process by a neutral third party will allow the CLECs and the Authority to verify that BellSouth is providing accurate data and is appropriately incurring the consequences of the remedies plan adopted by this Authority.

ISSUE **BELLSOUTH AFFILIATE DATA**

The CLEC Coalition recognizes that the Authority has denied BellSouth's request to have a "CLEC" in its ILEC territory in the State of Tennessee. The Coalition recognizes that most affiliate reporting is only necessary in the instance the ILEC has an affiliated "CLEC" operating in its territory in a state. To the extent it remains the case that BellSouth does not have this in Tennessee, some of the affiliate reporting requested by the CLECs in other states need not be implemented in Tennessee.

Affiliate reporting should, however, include any and all BellSouth affiliates that purchase wholesale services from BellSouth. The term ~~the~~ affiliate~~s~~ should be defined pursuant to Section 3(1) of the Telecommunications Act:

AFFILIATE ~~is~~ The term ~~the~~ affiliate~~s~~ means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership with, another person. For purposes of this paragraph, the term ~~to own~~ means to own an equity interest (or the equivalent thereof) of more than 10 percent. (47 U.S.C. 153(1).)

Affiliates other than a "CLEC" affiliate (such as a "data" affiliate or BellSouth's ultimate long distance affiliate) may fall under this definition. The Pennsylvania Public Utilities Commission ordered such affiliate reporting in its December 31, 1999 performance standards and remedies order. The FCC has confirmed that for Section 271 purposes, for functions that it provides CLECs that are analogous to the functions it provides itself, the RBOC must provide access that is substantially the same as the level of access the RBOC provides to itself, its customers or its affiliates. (*In re: Application by Bell Atlantic New*

York for Authorization Under Section 271 of the Communication Act to Provide In-Region, InterLATA Service in New York, CC Docket No. 99-295, Memorandum Opinion and Order (rel. Dec. 22, 1999), ¶ 44) (“New York 271 Order.”)

In the New York 271 Order, the FCC does not state that it would not consider affiliate data, and there is no basis for believing the FCC would not consider such data if available. The New York commission had not addressed affiliate reporting when it first developed its carrier-to-carrier guidelines and New York CLECs did not press the issue because Verizon had virtually no affiliates with which they competed. Since then, Verizon has entered the long distance business in New York through two affiliates and has established a separate data affiliate. Recently the New York commission has required that Verizon report its affiliate data separately from CLEC data for study on how it will be used in determining parity in the future.

In some limited cases for line sharing metrics, Verizon’s data affiliate already is designated by the New York commission for use in determining parity performance. Specifically, in the Case 97 C 0139 *Order Adopting Revisions to Inter-carrier Service Quality Guidelines*, issued and effective December 15, 2000, the New York commission stated:

To provide meaningful information on parity performance of the ILEC, the ILEC affiliate data should be reported separately. That is if affiliate data is reported together all other competitor data, the ILEC performance to competitors may be masked. As these data may have competitive significance, the separately reported affiliate data should be provided to the Carrier Working Group through the existing protective order under which data are shared.

The CLEC Coalition disagrees with BellSouth regarding whether to combine affiliates’ data with that of CLECs. If BellSouth provided its affiliate unlawfully preferential service,

this combined reporting of BellSouth's affiliates with CLECs' would only serve as a 'thumb on the scale' to make the treatment of the competitors look better as a whole than it actually is. (Kinard Direct at 58.) Further, in its response to the CLEC Coalition's motion for Clarification and Reconsideration in Georgia in Docket 7892-U, the Georgia Commission found that "BellSouth shall not include its Affiliate data in the remedy calculation as it applies to industry-level remedies." Affiliate information should be reported separately by each affiliate (data, wireless, future long distance, or other) with activity in the metric category.

ISSUE: SPECIAL ACCESS

The CLEC Coalition supports the adoption of metrics and remedies for special access services. The Coalition supports the positions set forth by Time Warner Telecom and by WorldCom in their respective briefs on this issue.

REMEDY PLAN ISSUES

The passage of the 1996 Act places BellSouth in the unique position of being the main supplier and the main competitor of CLECs in Tennessee. As such, BellSouth currently has the incentive to maintain its existing monopoly by delivering lower quality service to CLEC customers than it provides to its own retail customers. Thus, in order to ensure that competition develops in the local exchange market and continues to flourish over time, this Authority must adopt a meaningful system of self-enforcing consequences to deter BellSouth from providing CLECs and their customers with discriminatory service and encourage BellSouth to correct performance deficiencies when they are detected. (Tr. V. IV D at 217-218)

CHARACTERISTICS OF AN EFFECTIVE REMEDIES PLAN

Characteristics of an Effective Remedies Plan

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The object of an effective remedies plan is to ensure that BellSouth is providing the same level of service to CLEC customers that it provides to BellSouth retail customers. The FCC has identified five key characteristics of an effective enforcement plan:

- a reasonable structure that is designed to detect and sanction poor performance when it occurs;
- clearly articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;
- potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
- a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and
- reasonable assurances that the reported data is accurate.

BA NY Order ¶ 433. As discussed in more detail below, the remedy plan proposed by the TRA, with the enhancements suggested by the CLEC Coalition, meets each of the FCC's requirements, while BellSouth's SEEM does not.

ISSUE: **WHAT IS THE APPROPRIATE ENFORCEMENT MECHANISM TO BE EMPLOYED TO DETERMINE IF BELL SOUTH IS PROVIDING COMPLIANT PERFORMANCE?**

In its Final Order in the ITC^DeltaCom arbitration, the TRA adopted a two-tiered enforcement mechanism as proposed by ITC^DeltaCom. (February 23, 2001, ITC^DeltaCom Final Order, at 10) The enforcement mechanism proposed by ITC^DeltaCom was a two-tiered structure that measured: (1) the quality of support delivered to each individual CLEC (Tier 1), and (2) the quality of support delivered to the CLEC industry as a whole (Tier 2). (Bursh Direct, at 7) In its final order in the ITC^DeltaCom arbitration, the TRA ordered that for Tier 1 measures, if BellSouth fails to perform in accordance with the designated performance standard for a measure in a given month, BellSouth would pay remedies directly to the affected CLEC. (ITC^DeltaCom Final Order, at 8). There is no dispute among the parties on this point.

In the TRA's base remedy plan, Tier 2 remedies are paid directly to the TRA. Tier 2 remedies are triggered if BellSouth fails to perform in accordance with the designated performance standard for a given measure for three (3) consecutive months. (*Id.* at 10) This aspect of the TRA's plan is an area where the CLEC Coalition has requested modification.

Under Tier II of the TRA's base remedy plan, BellSouth could have two consecutive months of non-compliant performance on an industry wide level and not incur any remedy if its performance in the third month was complaint. In essence, BellSouth could actually provide non-compliant support at the industry level for 8 months of the year and not incur any consequences. (Bursh Direct at 23).

Tier II consequences are designed to counterbalance BellSouth's incentive to damage, not just individual companies, but the competitive marketplace itself. A determination of non-compliance in Tier II means that CLEC customers are impacted in greater volumes. It's extremely damaging to the entire CLEC industry for CLEC

customers to receive deplorable service for two consecutive months and BellSouth not face any consequences. Linking Tier 2 remedies to three consecutive months of failure, as opposed to monthly reporting, needlessly delays self-enforcement of consequences for violations of the performance requirements affecting not just one CLEC, but also the entire industry. One month of non-compliance that affects the CLEC industry as a whole is damaging to too many CLECs and their customers and therefore warrants the imposition of Tier II on a monthly basis. (*Id.* at 23-24)

Therefore, the CLEC Coalition requests that the TRA modify its base remedy plan to provide that Tier II remedies would accrue on a monthly basis if BellSouth's performance for a particular measure for the CLECs in the aggregate falls below required performance standards.

ISSUE: HOW SHOULD REMEDIES ACCRUE UNDER THE REMEDY PLAN?

Remedies Should Not Accrue On A Transaction Basis	Remedies
Should Not Accrue On A Transaction Basis	Remedies Should Not Accrue
On A Transaction Basis	<p>As stated above, the TRA adopted a two tiered enforcement mechanism as proposed by ITC^DeltaCom. Under ITC^DeltaCom's enforcement mechanism, remedies accrued on a per measure basis. The CLEC Coalition supports the measure based plan adopted by the TRA. In a measures based plan, remedies accrue at the level in which the comparisons are made (i.e. at the measure/sub-measure level). Thus, the remedy amount is a direct function of the departure of BellSouth's performance from the performance standard. (Bursh Direct at 3) Moreover, a measure based plan is the most effective way of ensuring that BellSouth provides CLECs with non-discriminatory support. A measure-based plan can still generate remedies significant enough to motivate BST even though CLEC transactions volumes are low. Additionally, a measured-base plan will not generate less remedies with persistent discrimination by BST. Consequently, at a time</p>

when CLECs are struggling to get into market, a measure based plan, rather than the transaction based plan in SEEM, would be more effective in motivating compliant performance on the part of BellSouth. (Bursh Rebuttal at 8)

In SEEM, BellSouth proposes that remedies accrue on a transaction basis. (Coon Direct at 84) BellSouth's proposal should be rejected for several reasons. First, accruing remedies on a transaction basis as set forth in SEEM would minimize BellSouth's liability because a significant number of CLECs are currently at an embryonic level of activity and are generating few transactions. (Bursh Rebuttal at 7-8) BellSouth will incur few penalties until the volume of CLEC transactions increases. Thus, BellSouth's proposal leaves CLECs in a Catch-22 situation. In order to motivate the level of support required from BellSouth, a remedy plan must be put in place that provides a real incentive to BellSouth to provide parity service. Under BellSouth's proposal, however, the consequences for poor performance that would supply that incentive would not reach meaningful levels until CLECs had a stronger hold in the market.

Currently, BellSouth does not allow CLECs a full and fair opportunity to compete, resulting in transaction volumes that are virtually insignificant. Basing penalties on these low volumes would not generate sufficient remedies to motivate compliant behavior by BellSouth. Consequently, remedies should accrue on a performance measures basis. (Bursh Rebuttal at 8)

Additionally, although BellSouth's SEEM is transaction based, BellSouth does not pay remedies on all transactions where a violation of the performance standard occurs. (Tr. V. II B at 96-97) As discussed below, through the remedy calculation contained in SEEM, BellSouth systematically limits its potential liability by reducing the number of transactions for which BellSouth will be subject to remedies. (Bursh Rebuttal at 9-10). Additionally, a transaction based plan would potentially reward BellSouth for its poor performance.

BellSouth's poor service to CLECs could cause CLECs to lose customers, thereby reducing the number of CLEC transactions in succeeding months, which would ultimately reduce the amount of remedies BellSouth would have to pay. (*Id.* at 8-9) Thus, for the reasons discussed above, and more fully below, under the TRA's plan, remedies should accrue on a sub-measure basis.

ISSUE: HOW SHOULD REMEDIES BE CALCULATED IN THE REMEDY PLAN?

Under the remedy calculation methodology used in SEEM, even though BellSouth's plan is transaction based, BellSouth does not pay remedies on all transactions where a violation of the performance standard occurs. The final remedy payout in BellSouth's SEEM is based on a subset of failed transactions, called the "affected volume." (Bursh Rebuttal at 10) The affected volume computed in SEEM equals the product of two factors: a fraction referred to as the "volume proportion" and the number of transactions, representing violations, from cells having negative z-scores. As a component of the SEEM, the remedy calculation uses a factor, a slope of $\frac{1}{4}$ that inappropriately reduces BellSouth's liability to calculate the volume proportion. There exists no substantiated reason for BellSouth to use a slope of $\frac{1}{4}$ which ultimately reduces the transactions that are subject to remedies. (*Id.*)

The remedy calculation methodology used in SEEM inappropriately determines violations at the aggregate level and applies remedies at the disaggregated level, which is biased toward BellSouth. (*Id.*) The SEEM remedy calculation methodology improperly excludes failed transactions from the cells with positive z scores, even though these cells have already contributed to the aggregate z. (*Id.*) In other words, BellSouth will use some failed transaction in making the compliance determination, but neglect to use these same failed transactions in determining the remedy amount. The result is that BellSouth will make

smaller payments than if the volume proportion, which is calculated from the state aggregate-
z, is applied to all cells. Thus, BellSouth will only pay remedies on a small fraction of the
CLEC transactions where it has violated the designated performance standards. (*Id.* at 11)

The example BellSouth provided to illustrate its remedy calculation methodology
clearly shows that under SEEM, BellSouth is allowed to escape paying remedies for a large
number of CLEC transactions where BellSouth is in violation of the performance standard.
(Exh. DAC-2, Appendix E p. 39) Mr. Coon testified that the example accurately reflects what
could happen using BellSouth's remedy calculation methodology. (Tr. V. II B at 95) In
BellSouth's example, there are a total of 96 CLEC transactions where BellSouth missed the
required performance standard. (*Id.* at 96) According to BellSouth's example, however, it
would only be required to pay remedies on 29 of the 96 transactions. (*Id.*)

When questioned regarding the illustration provided by BellSouth, Mr. Coon made a
failed attempt to explain why a majority of the failed transactions would not be remedied.
First, Mr. Coon stated that, "the reason we are paying on 29 rather than 96 is it represents the
fact that we have some retail misses." (*Id.* at 98) Under further questioning, however, Mr.
Coon was unable to explain how BellSouth arrived at 29 as the number of transactions to be
remedied. (*Id.* at 97-99) Additionally, Mr. Coon admitted that the "affected volume was
merely an approximation of the number of transactions that should be remedied. (*Id.* at 101)

In his rebuttal testimony, Dr. Bell explained that the examples BellSouth provided to
illustrate its remedy calculation are incorrect. Dr. Bell testified that although the ILEC
sample sizes for cells 1-10, which are not provided, would be required to validate the
modified z and truncated z values, there is enough information available to prove that the
balancing critical values shown in the tables are wrong by as much as a factor of 70. (Bell

Rebuttal at 8-9) Dr. Bell explained that the tables all report balancing critical values of -0.21 . However, for Order Completion Interval, if the total ILEC sample size of 50,000 is divided equally among the ten cells, the correct balancing critical value (BCV) is -14.58 . (*Id.*) If, instead, the ILEC sample is divided in proportion to the CLEC sample, the correct BCV is -14.67 . Dr. Bell further explained that even if each ILEC cell size were only 10 (for a total of ILEC sample of 100), the correct BCV would be -4.75 . Thus, under any of these three scenarios for the correct BCV, a truncated Z of -1.92 would not even approach the BCV, and no payout would be made. Consequently, all three tables give a distorted impression of the SEEM remedy procedure. (*Id.*)

Thus, BellSouth's illustration shows that the use of the SEEM remedy calculation methodology could result in BellSouth not paying remedies on a significant number of transactions where BellSouth violated the performance standard. A remedy calculation that produces such a result will not incent BellSouth to provide CLECs with compliant service, or to open its market to local competition as envisioned and required by the Act.

Like the CLECs, the Florida Commission expressed serious concerns with BellSouth's parity gap and affected volume calculation. The Florida Commission stated, ". . . the BellSouth plan is predicated on parity gap calculations that are very questionable. . . ." (*Florida Order* at 162) Thus, the Florida Commission ordered BellSouth to develop a measure based plan. (*Id.*) The Commission further ordered that Tier 1 remedies be set such that the average Month 1 remedy approximates the \$2,500 minimum payment recommended by the CLEC Coalition. (*Id.*)

The Florida Commission's Final Order is consistent with the base remedy plan proposed by the TRA. The TRA also adopted a flat fee schedule where the Month 1 Tier 1

remedy is \$2,500 per measure and escalates for successive months of non-compliance. (ITC^DeltaCom Final Order, Exhibit H) While BellSouth contends that the TRA adopted a transaction based plan in the ITC^DeltaCom arbitration, Mr. Coon admitted that the remedy amounts were more appropriate for a measure based plan. (Coon Rebuttal at 86; Tr. V. II A at 55)

The most basic attribute of an effective remedies plan is that the remedies must be significant enough to provide incentive for BellSouth to comply. The size of the penalties must be significant enough to make it more cost effective for BellSouth to provide nondiscriminatory service than to provide a degraded level of service to CLECs to avoid competition. (Bursh Rebuttal at 5, 7) BellSouth's plan fails to provide a meaningful incentive to assure compliant performance.

BellSouth witness Dr. Taylor does not believe that all functions or performance metrics have the same economic value. (Taylor Rebuttal at 20) Dr. Taylor testified that if the public policy goal is to provide BellSouth a greater economic incentive to comply with performance standards than not to comply, the size of the penalty payments should vary directly and proportionally with the economic disparity. (*Id.* at 23-24) "Equating more serious performance disparities with more severe economic consequences... the ideal system of penalties should be calibrated to the economic seriousness of the performance disparities." (*Id.*) However, Mr. Coon testified that BellSouth's fee schedule does not tie the penalties to the economic severity of a performance disparity. (Tr. V.II B at 104)

Dr. Taylor supports BellSouth's penalty payments, which he asserts are based on (1) the type of underlying transaction, (2) the estimated economic seriousness of the violation, and (3) the duration of the violation. Dr. Taylor admitted, however, that he does not no how

BellSouth arrived at the numbers in its fee schedule. (Tr. V.I. at 24-25) Moreover, Dr. Taylor admits that the fee schedule proposed by BellSouth does not represent the true economic value to BellSouth of discrimination against CLECs. (*Id.* at 25) Mr. Coon also testified that he had no basis or fact to support whether the amounts in the fee schedule reflect the economic value to BellSouth of discriminating. (Tr. V. II B at 105-106)

Mr. Coon testified that the amounts in the fee schedule are amounts that BellSouth is willing to pay if it misses a performance standard for a particular category. (Tr. V. II B at 111) BellSouth has provided no basis for this Authority to adopt the remedy amounts it has proposed in its fee schedule. In fact, Mr. Coon testified that BellSouth does not believe that enforcement plans are needed at all. (*Id.* at 112). Consequently, the amounts in BellSouth's fee schedule are not set at a level that is designed to deter discriminatory performance by BellSouth, but rather are nothing more than a cost of doing business for BellSouth. (*Id.* at 114). The fee schedule proposed by BellSouth should be rejected.

In this proceeding, the CLEC Coalition supports the adoption of the flat fee schedule proposed in the TRA's base remedy plan. The remedy amounts are set at a level that will incent BellSouth to provide CLECs with a parity service as required by the Act.

**ISSUE: WHAT ARE THE APPROPRIATE PERFORMANCE STANDARDS
AND ENFORCEMENT MEASURES TO BE REPORTED BY
BELLSOUTH FOR TIER 1 AND TIER 2?**

In order to be effective any remedy plan adopted by the TRA must contain an appropriate set of performance measures and standards. The parties agree that BellSouth's performance should be measured using a retail analog, and if no retail analog is available that a benchmark should be used. (Bursh Direct at 8; Coon Direct at 5) It is critical for the accurate detection of discriminatory performance that retail analogs be properly specified.

Use of an inappropriate retail analog allows BellSouth to actually report compliant support, even though in reality it is providing discriminatory support. (Bursh Rebuttal at 20)

For example, the retail analog for OCI - UNE Loops is Retail Residence & Business Dispatch. A significant percent of the UNE Loop observations could be UNE Analog Loops that are all dispatch-in. Dispatch-in signifies that the work is done within the Central Office. Dispatch refers to service where the work is done in the field or outside of the Central Office. Clearly, work done within the Central Office has a shorter interval than work done away from the Central Office. Thus, BellSouth would always appear to be providing longer intervals for its own retail operations (i.e. compliant support) primarily because the retail analog in this example is inappropriate. (Id. at 20-21) Thus, it is important that retail analog that allow for like-to-like comparison be used.

In its ITC^DeltaCom Final Order, the TRA stated “many businesses will not achieve a higher standard unless an external force causes them to attain a higher standard. . . .” (ITC^DeltaCom Final Order at 7). Moreover, as the Florida Public Service Commission noted, “benchmarks set lower than 90 or 95 percent do not generally allow ALECs a reasonable opportunity to compete.” (*Florida Order* at 145) The CLEC Coalition agrees with both the TRA and Florida Commission’s conclusion that setting higher standards is necessary to motivate BellSouth’s performance. BellSouth’s own witnesses acknowledged that BellSouth will concentrate its efforts on the states that have adopted the highest benchmarks. (*Id.* at 49-50)

In its ITC^DeltaCom arbitration, this Authority adopted the retail analogs and benchmarks proposed by ITC^DeltaCom for all measures adopted in that proceeding. Consequently, those benchmarks are the starting point for this proceeding. The CLEC

Coalition's position regarding the appropriate retail analogs and benchmarks to be adopted in this docket is discussed above. As it pertains to the enforcement plan, the CLEC Coalition believes that the same performance standards should apply for determining remedies, as applies to performance reporting by BellSouth. There is no logical reason for making any distinction in the performance standards.

In the TRA's base remedy plan, BellSouth's service to CLECs and to its own retail operations is gauged using a comprehensive set of performance measurements, referred to as "sub-measures." The sub-measures proposed in the TRA's base remedy plan, with the additions proposed by the CLECs, cover the panoply of BellSouth's activities that CLECs must rely upon in order to deliver their retail service offerings in the local market place. (Bursh Direct 10) Every sub-measure is designed to identify and measure a key area of activity that affects CLEC and BellSouth customers, and consequently, the development of competition in Tennessee's local telecommunications market. (*Id.*)

In the ITC^DeltaCom Plan, all sub-measures proposed were included in the enforcement plan and were subject to remedy payments. Consequently, when the CLEC Coalition submitted its pre-filed testimony it was believed that all measures in the TRA's base remedy plan were subject to remedies. Subsequently, on August 16, 2001 the TRA issued three matrices that outlined various aspects of the base remedy plane proposed by the TRA. The CLECs now discern from Matrix III that, rather than adopt all measures as part of the enforcement plan, the TRA has designated certain categories of measures to be subject to remedies in Tier 1 and/or Tier 2 of the remedy plan.

Specifically, the Tier 1 enforcement measure categories adopted by the TRA were: Ordering, Provisioning, UNE Provisioning, Maintenance and Repair, UNE Maintenance and

Repair, LNP, IC Trunks and Collocation. The Tier 2 enforcement measure categories adopted by the Authority were: OSS Pre-Ordering, Ordering, Provisioning, UNE Provisioning, Maintenance and Repair, UNE Maintenance and Repair, Billing, LNP, IC Trunks and Collocation. (Matrix III). These are essentially the categories listed in BellSouth's "Liquidated Damages Table for Tier-1 Measures" and "Voluntary Payments for Tier-2 Measures." (ITC^ DeltaCom Final Order at 11, Exhibit "A")

While the CLECs believe that BellSouth will only be motivated to provide compliant support for measures that are subject to remedies, as indicated in the CLEC Coalition's response to the TRA's matrices, CLEC Coalition can support the categories of measures the TRA subjected to remedies in Matrix III. The CLEC Coalition's support of the enforcement measurement categories in the TRA's base remedy plan assumes that all measures adopted by the Commission that fall into the identified categories will be subject to remedies.

The CLEC Coalition would like to make clear, however, that it does not support the use of the enforcement measurement categories as implemented in BellSouth's SEEM. As an initial matter, BellSouth's SEEM is far narrower than its SQM Plan. SEEM contains only a small subset of the measures BellSouth proposes to report on for the TRA. (Bursh Rebuttal at 13) Consequently, many important aspects of BellSouth's performance critical to the CLECs' ability to compete in the local market will not be subject to remedies under BellSouth's plan. (*Id.* at)

As an example, BellSouth acknowledges that FOC Timeliness is a key measure for CLECs. (Coon Direct at 19) Nevertheless, BellSouth excludes FOC Timeliness from Tier I of SEEM. (*Id.* at 17) Without a FOC, CLECs cannot provide their customers with an expected date of service. End user customers are not willing to rely on providers who cannot

provide something as simple as a service due date in a timely manner. Therefore, monitoring BellSouth's performance in this area is critical to CLECs.

Under SEEM, however, an individual CLEC can experience excessively long intervals before receiving FOCs from BellSouth, and BellSouth would not incur any remedy. In other words, BellSouth can hinder an individual CLEC's ability to provide its customers with timely notice of service without a consequence to BellSouth. (*Id.*) BellSouth has not provided any satisfactory justification for excluding these measures from Tier 1 of SEEM.

Mr. Coon attempted to justify the exclusion of FOC Timeliness from Tier 1 by stating that in a fully mechanized arena for FOC Timeliness, if BellSouth had a failure in the ordering systems, "it would affect not just one CLEC but presumably could affect all of them." (Tr. V. II C at 140-141). However, Mr. Coon admitted that there are instances where it will only affect some of the CLECs and not others. (*Id.*) Mr. Coon also admitted that in the circumstance where some CLECs are affected and others are not, it would not be industry-affecting and therefore, those violations would go without remedy under BellSouth's plan. (*Id.*)

BellSouth continues to imply that the measures in SEEM were patterned after those used in New York and Texas. Contrary to BellSouth's suggestion, however, the measures in BellSouth's SEEM were not selected in the same manner as the measures contained in the New York Bell Atlantic Plan. In New York, the CLECs participated in developing the list of comprehensive measures from which the enforcement measures were selected. The measures in SEEM, however, were unilaterally selected by BellSouth without any direct input from the CLEC community. (Bursh Rebuttal at 14-15)

Mr. Coon stated in his direct testimony that the New York and Texas Commissions

charged the CLECs with identifying the measurement set that was most customer impacting. (Coon Direct at 22) In this instance, BellSouth unilaterally made its determination of the measures that are “key” CLEC customer impacting measures. (Bursh Rebuttal at 14) While BellSouth has been ordered to include certain measures requested by CLECS in its SQM and SEEM, BellSouth has not requested and has even ignored input from the CLECs regarding the measures that should be included in its SQM and SEEM. (*Id.*)

For example, BellSouth does not include Speed of Answering In Order Center as an enforcement measure in SEEM. As the CLEC testimony conveys, hold times to the LCSC are unbearably long and hinder the ability of CLECs to be responsive to their customers. Even though the CLEC customer is directly impacted by LCSC hold times, BellSouth has neglected to include this measure in SEEM. Additional measures that BellSouth decided to omit from its remedy plan include:

- Service Inquiry with LSR Firm Order
- Mean Held Order Interval
- Average Jeopardy Notice Interval
- Percentage of Orders Given Jeopardy Notice
- Average Completion Notice Interval
- Coordinated Customer Conversion – Average Recovery Time
- Speed of Answer Performance/Average Speed to Answer-Toll
- Speed to Answer Performance/Percent Answered within “x” seconds – Toll
- Speed to Answer Performance/Average Speed to Answer – DA
- Speed to Answer Performance/Percent Answered with “X” Seconds - DA
- Collocation Average Response Time
- Collocation Average Arrangement Time
- Change Management Notice Average Delay Days
- Change Management Documentation Average Delay Days
- Meantime to Notify CLEC of Network Outage
- Recurring Charge Completeness
- Non-Recurring Charge Completeness
- Database Update Interval
- Database Update Accuracy
- NXX and LRNs Loaded by LERG Effective Date

- Notification of Interface Outages

BellSouth attempts to justify the elimination of these measures by arguing that they are “correlated” or “parity by design.” (Coon Direct at 23; Coon Rebuttal at 29) The CLEC Coaliton and BellSouth agree that remedies should not apply to measures that are shown to be duplicative or highly correlated. (Coon Rebuttal at 29-30; Bursh Rebuttal at 18; Tr. V. IV A at 229). The parties disagree, however, regarding the procedure that is necessary to determine that measures are duplicative or correlated. The CLEC’s believe that an industry-developed correlation analysis is required to accurately determine whether there exists any correlation between measures. As Ms. Bursh testified, until an industry-developed correlation analysis can be conducted, any determination regarding the correlation between measures is merely a guess. Therefore, no measures should be excluded based upon alleged correlation between measures. (Bursh Rebuttal at 18).

Bellsouth has identified a number of measures that it feels are duplicative or correlated. (Coon Rebuttal, Exhibit DAC-R2) BellSouth has not conducted any formal analysis in making its determination. Mr. Coon testified that it would be inappropriately punitive to require BellSouth to pay twice for the same inaction or act. (Coon Rebuttal at 29-30) Mr. Coon testified, however, that the overlap is not absolute, but BellSouth would be subject to the possibility of making multiple payments for the same failure. (*Id.*)

In response to a question from Director Malone, Ms. Bursh provided an example using the Mean Held Order Interval & Disribution Interval Measures and the Percent Missed Installation Appointments Measure to demonstrate how the exclusion of measures BellSouth has designated as correlated from the remedy plan could result in BellSouth not paying a remedy. (Tr. V. IV A at 227). As Ms. Bursh demonstrated, if a customer’s order is held, but the customer cancels the order, it never becomes a missed appointment and would not result in a remedy. The reason is because the held order interval measure is not

in the plan, and because the cancelled order would not be counted under the business rules, calculations and exclusions in the percent missed installation appointment measure. (*Id.*)

Because no accurate correlation analysis has been conducted, the TRA should not exclude any measures from the remedy plan. Rather, until an appropriate analysis is conducted, to address the concerns of the CLECs and BellSouth regarding possible correlation between measures, the TRA should order all measures included in the plan, but allow only one remedy when two measures that are deemed correlated are failed.

Similarly, without offering any supporting evidence, BellSouth has excluded certain measures from the remedy plan contending that they offer parity by design e.g. that the metric measures a process that serves both BellSouth retail and the CLEC without differentiation and there is no opportunity for disparate treatment. (Coon Rebuttal at 29.) An audit by an independent third party should be conducted to validate BellSouth's claim that certain measures provide parity by design. (Bursh Rebuttal at 19) Experience has shown that CLECs cannot rely upon BellSouth's claims regarding its inability to distinguish between CLEC orders and BellSouth orders. Moreover, since BellSouth is in the position of the monopolist and has made clear its position it does not believe a remedy plan is needed, it is vital that all claims by BellSouth that its systems operate blindly be verified before any measures are excluded from the remedy plan.

Additionally, BellSouth's SEEM inappropriately excludes the following enforcement measures from Tier I remedies:

- Loop Makeup – Response Time – Manual
- Loop Makeup – Response Time – Electronic
- Acknowledgement Message Timeliness
- Acknowledgement Message Completeness
- Percent Flow-through Service Requested
- Invoice Accuracy

- Mean Time To Deliver Invoice
- Usage Data Delivery Accuracy
- Reject Interval
- FOC Timeliness
- Cooperative Acceptance Testing - % xDSL Loops Tested

Thus, even though BellSouth will measure its performance on all of the measures in its SQM, under BellSouth's proposal there would be no consequences for BellSouth's failure to meet its performance obligations on many of them and therefore, no incentive for BellSouth to meet performance standards. (Bursh Rebuttal at 17-18)

The only alternative for CLECs who are experiencing poor performance in an area BellSouth does not include in its remedies plan would be to bring an action before the Commission. Such an action could at best correct BellSouth's performance prospectively, providing no compensation to the CLEC for the harm it has suffered, and the uncertainties of litigation mean that the threat of such actions would provide little incentive for BellSouth to avoid them. There must be consequences for the failure to perform adequately in regard to all measures that this Commission orders BellSouth to include in its SQM. The measures proposed by the TRA, plus the additional measures requested by the CLECs, represent a more comprehensive set measures to ensure that the goals of the Act are satisfied than does BellSouth's SEEM.

BellSouth's object is clear: narrow the measures that are subject to penalties, relax the standards by which penalties will be assessed, and drop measures that count as the penalties increase. While it is neither possible nor desirable to measure each and every step in each and every process involved in the delivery of local telephone service, failure to include an adequate sampling of key performance criteria in the measures subject to a remedy plan would permit, and indeed, encourage BellSouth to perform well on the measures that "count,"

without providing BellSouth an incentive to be diligent about providing nondiscriminatory service in other areas. Such “gaming” of the process must be avoided.

The Florida Commission rejected BellSouth’s position and ordered that Acknowledgment Timeliness, Acknowledgement Completeness, Reject Interval, Firm Order Confirmation Timeliness, Cooperative Acceptance Testing -% xDSL Loops Tested and Mean Time to Deliver Invoice be included as Tier 1 measures in its remedy plan. (*Florida Order* at 95-99, Attachment 6) There is no reason that the CLECs and customers in Tennessee should receive less protection than those operating in other states. Should the TRA determine that it is not appropriate to include all measures in the designated categories as enforcement measures, it should at a minimum require that the measures identified above be included in Tier 1 of the remedy plan it adopts.

ISSUE: WHAT IS THE APPROPRIATE STATISTICAL METHODOLOGY FOR DETERMINING BELL SOUTH’S COMPLIANCE WITH PERFORMANCE STANDARDS?

A performance measurements plan must include an appropriate statistical methodology to determine whether BellSouth is providing CLEC customers with service at parity to the service it provides to its retail customers. Merely reporting averages of performance measurements alone, without further analysis, does not indicate whether differences in performance results for CLEC customers versus a retail analog reflect actual discrimination or simply random variation. Once appropriate measures and comparison samples have been established, statistical tests compare the size of observed differences with the amount that could be expected to occur by chance under conditions of true parity of service. These comparisons help to determine quantitatively whether BellSouth has provided nondiscriminatory treatment to CLECs for measures with a retail analog. (*Bell Direct* at 3) No statistical methodology is required for benchmark measures. BellSouth either passes or fails the benchmark.

In its ITC^DeltaCom Final Order, the TRA adopted the Truncated z statistical test methodology to evaluate BellSouth's performance for parity measures with retail analogs. (ITC^ DeltaCom Final Order at 7) Truncated z aggregates modified z scores that are used to compare results in disaggregated cells. For each cell, BellSouth's performance for its retail operation (or that of its affiliates) is compared with the performance it provides to a given CLEC to create a z score (the modified z statistic), which then is used to determine whether BellSouth's performance for a CLEC is in parity with its performance for its retail operation. (Bell Direct at 3-4)

Although CLECs have advocated the use of the Modified z test statistic in all other proceedings, given other aspects of the base remedy plan adopted by the TRA, the CLECs can support the use of the Truncated z as long as it is properly implemented. (Bursh Direct at 20)

ISSUE: HOW SHOULD THE TRUNCATED Z METHODOLOGY BE IMPLEMENTED?

As Dr. Bell testified, Truncated z was designed to combine results from cells for which BellSouth's performance relative to parity is expected to be similar. (Bell Direct at 5) Aggregation methods—including Truncated z—should not be used to aggregate heterogeneous cells. (*Id.* at 4) If heterogeneous cells are combined, Truncated z can allow parity service in some cells to conceal discrimination in other cells. (*Id.* at 5)

The reason is that each cell that is found to be in parity increases the value of the truncated z statistic (high values are taken as evidence of parity). In addition, each new cell (whether in parity, or not) decreases the balancing critical value that Truncated z must fall below to be judged significant. Similarly, parity service in just a few large cells can conceal very poor service in much smaller cells because Truncated z weights the modified

z scores according to sample sizes in the cells. (*Id.* at 5-6)

BellSouth has proposed different aggregations than those incorporated in the Authority in its *Final Order of Arbitration*. The CLECs believe that BellSouth's proposal would lead to inappropriate aggregation of heterogeneous groups of cells, which could result in concealing discrimination. (Bell Rebuttal at 2) For example within SEEM BellSouth aggregates DS1 Loops and 2-Wire Analog Loops for provisioning metrics such as Average Completion Interval, even though each of the various UNEs has a different provisioning interval. The interval for one DS1 Loops is 23 days and the interval for one 2-Wire Analog Loops is 4 days.³ (Bursh Rebuttal at 19-20) Aggregating these products is inappropriate and does not contribute to "like-to-like" comparisons. Moreover, it allows discrimination on high-revenue/low volume products such as DS1s or DS3s to be easily concealed through consolidation with a dissimilar high volume product such as Analog Loops. Such aggregation masks differences and makes detection of inferior performance less likely. (Bursh Rebuttal at 20)

Contrary to the position taken by the CLECs, BellSouth does not believe that it is necessary to disaggregate to the same level for both compliance reporting and remedy reporting. (Coon Rebuttal at 27-28) As an example, BellSouth points to xDSL services. In his testimony Mr. Coon asserts that HDSL, ADSL, and UCL are all provided on a pair of copper wires. He contends that the service are distinguishable based on the electronics

³ BellSouth Products & Services Interval Guide – Network And Carrier Services, Customer Guide
CG-INTL-001, Issue 3b-December 2000

installed on the customer end by the CLP, and perhaps by the maximum length of the loop used for each service. (*Id.*) Therefore, Mr. Coon believes that BellSouth's aggregate performance in ordering, provisioning and maintaining all of these diverse loops is appropriate for determining any degree of disparate treatment for the purpose of assessing remedies. (*Id.*)

In its Final Order, the Florida Commission, which also adopted the Truncated z statistical methodology, rejected BellSouth's SEEM disaggregation. In rejecting BellSouth's position, the Florida Commission stated:

BellSouth is proposing only seven levels of product disaggregation for penalty determination. We find that this product reaggregation is inappropriate for penalty determination We find that BellSouth product disaggregation for compliance shall match what it has recommended, and we have approved, for product reporting purposes We estimate there would be over 825 levels of disaggregation for compliance reporting and penalties for Tier 1 and over 875 total levels of disaggregation for compliance reporting and penalties for Tier 2.

(Florida Final Order at 105) The level of disaggregation order by the TRA in the ITC^DeltaCom arbitration and adopted in the base remedy plan closely approximates the level of disaggregation adopted by the Florida Commission for penalty determination. In contrast, BellSouth's SEEM only includes 82 sub-measures that are subject to remedies. (Bursh Rebuttal at 14) The appropriate level of disaggregation to be adopted for enforcement measures and use with the Truncated z methodology is the dissaggregation incorporated in TRA's base plan.

**ISSUE: WHAT IS THE APPROPRIATE PARAMETER DELTA VALUE TO
BE USED IN THE TRUNCATED Z STATISTICAL
METHODOLOGY?**

As part of the statistical methodology BellSouth and the CLPs support the use of a balancing critical value. (Bell Direct at 10; Mulrow Direct at 12) In using the balancing methodology, some level of disparity in service is allowed to exist between the level of

service BellSouth provides to its own retail operations and the level of service BellSouth provides to CLPs. The parameter delta measures the size of the violation. (Bell Direct at 11) The smaller the delta is, the less disparity it allows. (Tr. V. III B, at 126) Ideally, this is the value that would yield a balance between the possibility that the data would indicate discrimination where it did not exist (Type 1 error) and the possibility that a random error would be made it appear that there was no discrimination when, in fact, there was non-parity performance (Type 2 error).

This “balancing critical value,” which computes an appropriate critical value, however, cannot be completely developed until the value of the parameter delta is determined. (*Id.*) The parties agree that this decision should be based on business judgment. Nevertheless, Dr. Bell and Dr. Mulrow agree that statistics can help guide the Authority’s decision by demonstrating the impact of various values of delta. (Bell Rebuttal at 3; Mulrow Direct at 18)

In its ITC^DeltaCom Final Order, the TRA ordered that the parameter delta value be set at .25. (ITC^DeltaCom Final Order at 7) The CLEC Coalition supports the TRA’s selection of .25 as the parameter delta to be used in determining BellSouth’s performance. On the other hand, BellSouth has proposed that the TRA adopt a delta parameter of 1.0 for Tier 1 measures and .50 for Tier 2 measures. (Coon Direct at 80) The differences when applying the proposed values are dramatic. Therefore, it is extremely important that the TRA select the appropriate value.

Dr. Bell presented two tables in his testimony to demonstrate the impact on CLEC customers if the parameter delta value is set at .25, .50 and 1.0. (Bell Direct at 12-13) BellSouth does not dispute the information in the Tables, but says it does not use delta to define the alternative hypothesis for proportion measures. (Mulrow Rebuttal at 8) However, that the CLECs do propose the use of delta for mean, proportion and rate measures. Moreover, BellSouth does use delta to define the alternative hypothesis for mean measures. Consequently, the tables provided by Dr. Bell are helpful in informing the Authority’s decision of the appropriate delta value.

Dr. Mulrow has presented a table to demonstrate the “odds ratio” methodology that BellSouth uses for proportion measures. (Mulrow Rebuttal at 11). However, BellSouth has not produce any evidence as to what values should be used for calculating the odds ratio. Dr. Mulrow also testified that whatever value of delta is chosen, BellSouth would begin making remedy payments at one-half delta. (Mulrow Rebuttal at 5) While Dr. Bell agreed, he testified that setting delta at a value such that one-half delta corresponds to a material disparity violates the balancing principle, which calls for balancing Type 1 and Type 2 errors where Type 2 error is evaluated at a disparity that is equal to delta. (Bell Rebuttal at 6)

A review of the tables provided by Dr. Bell makes it readily apparent that setting the delta parameter at 1.0 and .50 does not provide CLECs with parity service, but rather allows BellSouth to unreasonably discriminate against CLECs and their customers without any consequences. For example, Table 2 in Dr. Bell’s testimony shows that where 1% of BellSouth’s customers are receiving an unacceptable quality of service, using a delta parameter of 1.0 means that the disparity in service being provided to CLEC customers would not be material until 39.1 % of the CLEC customers are receiving an unacceptable quality of service. (Bell Direct at 13)

Likewise, Table 1 in Dr. Bell’s testimony demonstrates that a delta value of 1.0 implies that if BellSouth takes 5 days to provide a specific service to its customers, BellSouth could take up to ten days to provide the CLEC customer with the same service before it is determined to have committed a material violation. (Bell Direct at 12) While BellSouth would begin making remedy payments at one-half delta, this would still allow CLEC customers to receive poor service at an unacceptable rate as compared to BellSouth customers.

By contrast, a delta value of .25 adopted by the TRA is clearly more reasonable. While a delta value of .25 still allows BellSouth to miss more than twice as many appointments for CLEC customers as for BellSouth’s customers before (11.8% versus 5.0%) disparity is deemed material, it better protects the interests of CLECs and their customers, the

Tennessee consumers. Setting the parameter delta value at a level that allows BellSouth to provide 31.9% of CLEC customers with inferior service, when it provides only 1% of its customers with inferior service, and take five days longer to provide CLECs with a service than it does its own customers, even for six months, would cripple the development of competition in Tennessee and could drive some CLECs out of business.

Moreover, setting the parameter delta values at 1.0 and .50 is clearly inconsistent with enforcing BellSouth's obligation to provide CLECs with parity service under Sections 251 and 252 of the Act. Setting a parameter delta value which allows BellSouth to escape any consequences until it is providing nearly nine times the number of CLEC customers with as poor a level of performance as its own customers does nothing to incent BellSouth to open its market to local competition or to ensure that CLECs have a fair and equal opportunity to compete for and serve customers.

CLECs have produced compelling evidence of the negative impact BellSouth's proposed delta values will have on CLECs and their customers. While the adoption of .25 does not result in a situation where BellSouth is providing CLECs customers with absolute parity service, the result yielded is far more reasonable than if the parameter delta value is set at 1.0 and .50. Therefore, the TRA should reaffirm its selection of .25 as the appropriate parameter delta value.

ISSUE: WHAT PERFORMANCE DATA AND REPORTS SHOULD BE MADE AVAILABLE BY BELL SOUTH TO CLECS?

BellSouth should provide CLECs with performance data and reports that include BellSouth's provision of:

- a. Services to BellSouth's retail customers in aggregate;
- b. Services and facilities provided to any BellSouth local exchange affiliate purchasing interconnection, unbundled network elements or resale;
- c. Services and facilities provided to carriers purchasing

interconnection, unbundled network elements or resale in the aggregate; and

- d. Services and facilities provided to individual carriers purchasing interconnection, unbundled network elements or resale.

The reports should reflect the outcome of statistical procedures applied to each sub-measure for which a parity determination will be made. Benchmark results should also be reported. (Bursh Rebuttal at 22-23)

Additionally, access to the raw data used to create performance reports is essential to a CLEC's ability to validate the performance data and reports provided by BellSouth. (*Id.*) BellSouth admits to not providing the raw data for all the measures in its SQM. Mr. Coon testified that BellSouth provides raw data underlying performance data and reports, **only** to the extent such reports are derived from BellSouth's Performance Measurement Analysis Platform (PMAP). (Coon Direct at 96-98) BellSouth, however determines what goes into PMAP.

Mr. Coon testified that BellSouth does not have the capability to make available electronically the raw data that is used to generate reports outside of PMAP. (Coon Direct at ____) But, Mr. Coon admits that BellSouth determines what goes into PMAP.

If BellSouth or a CLEC discovers that raw data records or performance reports exclude data, omit data, are calculated incorrectly, or contain an error of any type, BellSouth should be required to immediately notify affected CLECs. BellSouth should then make arrangements to correct the raw data or performance reports, and submit the corrected report to the CLECs. If BellSouth or an CLEC discovers a data error after the report is no longer accessible to CLECs, BellSouth should remain responsible for correcting the error and immediately notifying the CLECs of the error and the measures taken to make the correction. The obligation to correct errors after access to the reports has ended should remain for 12

months after the date the report is no longer accessible to CLECs.

ISSUE: WHERE, WHEN, AND IN WHAT FORMAT SHOULD BELLSOUTH PERFORMANCE DATA AND REPORTS BE MADE AVAILABLE?

BellSouth should make performance data and reports available to CLECs in a readily accessible manner on an Internet web site. The performance reports should be specified in a summarized spreadsheet format. The performance data should be provided in a format that can be readily utilized by standard database management tools such as Excel, Access, or Oracle. If any data is excluded from the reports, BellSouth should be required to identify and justify all exclusions before excluding them from reports. The data and reports should be made available on the 15th day of each month.

Additionally, BellSouth should maintain a current and accurate user's manual to support CLECs when accessing and interpreting the raw data. The user's manual should include detailed descriptions of what the data means, i.e., beginning and ending parameters for fields, and include definitions for the codes use by BellSouth. BellSouth should also provide a knowledgeable single point of contact with whom CLECs can confer to resolve questions about accessing the raw data including, but not limited to, explanations of the fields, parameters, code definitions, file column purposes and headings.

BellSouth agrees with the CLEC position on these issues, and contends that it already posts a comprehensive User Manual on the same website that it posts performance data and reports, and provides a single point of contact to answer questions regarding the raw data and User Manual. (Coon Direct 96-98) Consequently, BellSouth should have no objection to the inclusion of these requirements in the enforcement plan ordered by the Authority.

ISSUE: SHOULD BELLSOUTH BE PENALIZED WHEN BELLSOUTH FAILS TO POST THE PERFORMANCE DATA AND REPORTS TO THE WEB SITE BY THE DUE DATE OR IF PERFORMANCE DATA AND REPORTS PUBLISHED ON THE BELLSOUTH WEB SITE ARE INCOMPLETE OR INACCURATE?

BellSouth contends that it will make every effort to post reports by the due date, but that it should not be subject an automatic penalty for the late posting of reports because there

is little evidence that late reporting is harmful to CLECs or the Authority. (Coon Rebuttal at 49) Similarly, BellSouth asserts that it should not be subject to automatic penalties for posting incomplete or inaccurate reports because applying a penalty, once an error has been corrected or a report has been completed would discourage such corrections, even if they were appropriate. (Coon Direct at 51) BellSouth is wrong.

One of the key functions of an effective remedy plan is to motivate an ILEC to provide parity service to CLECs. BellSouth's posted performance data and reports are the most effective means available to CLECs' and this Authority to ensure that BellSouth is complying with designated performance standards and providing parity service to CLECs as required by the Act. BellSouth's posted performance data and reports are also the best means by which CLECs can identify issues regarding BellSouth's systems, processes and performance that need to be addressed. If this information is not provided to CLECs by the due date, or is incomplete or inaccurate when provided, the ability of the CLECs and the Authority to determine if BellSouth is providing parity service is hindered. Moreover, problems that affect a CLECs ability to service its customers cannot be detected or corrected in a timely manner.

Additionally, all parties agree that the self-effectuating nature of an enforcement mechanism is essential to its success. However, the self-executing nature of the remedy plan will likely be compromised if BellSouth does not meet its obligation to post performance data and reports by the due date. CLECs should not be put in the position of having to approach the Authority to force BellSouth to provide performance data and reports as required in the enforcement plan. Therefore, BellSouth should be required to comply with all reporting deadlines ordered by the Authority.

The \$5000 and \$1000 amounts included in the CLEC plan represent the amounts that the CLECs think are necessary to motivate BellSouth to comply with its reporting obligations. (Bursh Direct at 20) It is critical, however, that the Authority set penalty amounts for late, inaccurate, and incomplete posting of reports and data are sufficient to motivate BellSouth to

comply with its reporting obligations. Otherwise, the self-enforcing mechanism of the remedy plan will be hampered, because neither CLECs, nor the Authority, will be able to properly monitor BellSouth's performance.

Mr. Coon's suggestion that BellSouth would be willing to accept the \$2000 a day for late posting of reports and \$400 a day for the incomplete or inaccurate posting of reports and performance data in Staff's proposal, so long as it applies to the aggregate of all reports, is ridiculous. (Coon Rebuttal at 50-51) The purpose of this penalty is to motivate BellSouth to meet its performance reporting obligations, not to find an amount that BellSouth is comfortable with paying as a cost of doing business. Common sense suggests that in order to affect behavior, any consequence must be set at a level that the party does not wish to pay, otherwise the desired result will not be achieved. Thus, penalties of \$2000 and \$400 a day for the aggregate of late reports, and inaccurate or incomplete reports or performance data, which BellSouth is apparently willing to pay, would not be adequate to motivate BellSouth to meet its performance reporting obligations.

Consequently, this Authority should order BellSouth to pay for late and incomplete reporting. Other states have adopted these additional consequences to help ensure the smooth operation of their performance measurements plan, this Authority should do so as well.

ISSUE: WHEN SHOULD THE PERFORMANCE ASSESSMENT PLAN BECOME EFFECTIVE?

BellSouth maintains that remedies should only be adopted to prevent backsliding once BellSouth has entered the long distance market. (Tr. V. II B, pp. 123-24) A well-developed remedies plan, however, serves several important purposes.

First, it promotes the initial development of competition by providing the incentive for BellSouth to allow nondiscriminatory access to its network required by Section 251 of the Act. (Bursh Rebuttal at 24) The ability to offer customers at least the same level of service that they would receive from BellSouth is critical to CLEC efforts to attract and retain customers.

Second, once competition develops, self-enforcing penalties help to guarantee that BellSouth will continue to provide CLEC customers with the same quality service it provides to its retail customers.

Third, where BellSouth does provide discriminatory or non-parity service to CLEC customers, remedies are paid to CLECs to partially defray the additional costs attributable to inferior service provided by BellSouth. These costs include additional internal costs to resolve problems attributable to BellSouth's sub-par performance, in addition to credits given to customers to keep the customers' good will when service problems arise.⁴

Fourth, uncovering discriminatory service may lead to the discovery of underlying problems in BellSouth's systems and/or procedures. Once such problems are identified, remedies provide the incentive for BellSouth to address them head-on rather than to simply implement quick, short term fixes.

Fifth, rather than waiting for problems to be discovered, the prospect of remedies for discriminatory performance will provide an incentive for BellSouth to take proactive steps to avoid providing poor quality performance to CLECs. Finally, adverse consequences for discriminatory behavior will discourage backsliding once BellSouth has attained approval to enter the inter-LATA market. The varied purposes served by a remedies plan make it essential to institute such a plan as soon as possible.

BellSouth does not believe that an enforcement plan is needed at all. (Tr. V. II B, p. 112). Mr. Coon argues that BellSouth has a multitude of incentives to comply with the Act absent penalties. (Coon Rebuttal at 17) Mr. Coon argues that BellSouth cannot gain the authority to provide long distance service in Tennessee unless it is determined by the FCC the BellSouth is providing nondiscriminatory access to all CLECs in Tennessee. (*Id.* at 18). BellSouth, however, has the obligation to provide parity service to CLECs under Section 251 whether or not BellSouth applies for 271 relief. Contrary to BellSouth's contention, nothing

⁴ Of course, low quality service and repeated service problems causes harm to a CLEC's reputation in ways that cannot be repaired through monetary sanctions.

in the Act or the FCC's Orders prohibits this Authority from implementing an enforcement plan to ensure that BellSouth complies with its obligations to provide parity service under Sections 251 and 252 of the Act. In fact, BellSouth acknowledges that the TRA has decided this issue contrary to BellSouth's position on two prior occasions. (Tr. V. II B, p. 124; Coon Rebuttal, p. 18) Moreover, BellSouth acknowledges that the Georgia, Florida and Louisiana Commissions directed that their enforcement plans would be effective prior to BellSouth receiving authority to offer long distance service. (Tr. V. II B, p. 124)

By delaying implementation of the penalty plan adopted by this Authority until after BellSouth enters the long distance market, the Authority would forego the opportunity to enable more rapid development of competition. As evidenced by the testimony of Access, Covad, and others, many CLECs are currently experiencing problems with the quality of service they are receiving from BellSouth. These problems make it more difficult for CLECs to attract and retain customers. An appropriate penalty plan in effect now will encourage BellSouth to provide nondiscriminatory service during the critical early stages of competition, while providing some compensation to CLECs for the additional costs they incur when BellSouth's performance falls short.

**ISSUE: WHAT IS THE APPROPRIATE MECHANISM FOR ENSURING
THAT ALL PENALTIES UNDER TIER1 AND TIER 2
ENFORCEMENT MECHANISMS HAVE BEEN PAID AND
ACCOUNTED FOR?**

The CLECs believe that in order to provide BellSouth with a continuing incentive to meet designated performance standards, the Authority should have an independent auditing and accounting firm certify, on a random basis, that all penalties under Tier 1 and Tier 2 are properly and accurately assessed and paid in accordance with Generally Accepted Accounting Principles. (Bursh Rebuttal at 23) Simply providing for an annual audit as proposed by BellSouth and Staff is insufficient. If BellSouth is not accurately determining and paying penalties, given the circumstances some CLECs are in currently, having to wait twelve months for validation of BellSouth's remedy payments could have devastating consequences.

(*Id.*) Consequently, the Authority should order random audits to ensure the accuracy of BellSouth's penalty payments.

ISSUE: WHAT TYPE OF CAP, IF ANY, IS APPROPRIATE FOR INCLUSION IN THE PERFORMANCE ASSESSMENT PLAN?

In the ITC^DeltaCom Final Order, the TRA ordered an overall cap of 20% of BellSouth's Net Return prior to 271 and an overall cap of 36% after 271 approval. (ITC^DeltaCom final order at 11) BellSouth proposes an absolute cap on its potential liability of 36% of its Tennessee revenue. CLECs believe that an absolute cap is inappropriate for several reasons. First, an absolute cap represents a limit on BellSouth's liability for providing non-compliant service to CLECs. An absolute cap provides BellSouth with the means to evaluate the cost of market share retention through the delivery of non-compliant performance. Second, absolute caps send the signal that once BellSouth's performance deteriorates to a particular level (i.e. reaching the absolute cap) then further deterioration in performance is irrelevant. (Bursh Direct at 22) Once the absolute cap is reached, BellSouth would not pay any additional remedies even though it continues to provide LECs with non-compliant performance.

Therefore, if BellSouth were to reach the absolute cap within the first eight months of a year, it would pay no remedies for the remaining four months despite continued deterioration in its performance. Consequently, once BellSouth reaches the absolute cap it no longer has any incentive to correct its non-compliant performance. With an absolute cap on liability, BellSouth's liability is limited no matter how severe the discriminatory performance may become. As discussed above, remedies must be significant enough to make it more beneficial to BellSouth to provide nondiscriminatory service than to pay penalties for non-compliance. While other states such as New York and Texas have adopted caps of 36%, the FCC and the New York Commission recently determined that the 36% cap was insufficient.

Thus, the CLECs recommend that this Authority reject an absolute cap, and instead

adopt the procedural cap. A procedural cap is reasonable based on the guidance from the FCC, adjusted for the probability of detection of discriminatory behavior, and the experience in New York where an increase in the cap was required. By establishing a procedural cap, the Authority will remove any incentive for BellSouth to take advantage of potential economic benefits of providing CLECs with discriminatory service. (*Id.* at 22)

If the Authority does adopt a procedural cap, however, BellSouth should be required to continue making remedy payments into an interest-bearing registry or escrow account. Of course, the object of a self-executing remedies plan is to avoid coming to the Authority to resolve disputes about poor performance. Self-executing remedies remove the delays and expense of pursuing litigation. As the FCC stated, an effective enforcement plan shall “have a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal.” BA NY Order ¶ 433. Therefore, a procedural cap, if adopted, must be set sufficiently high so as not to negate the benefits of self-executing remedies.

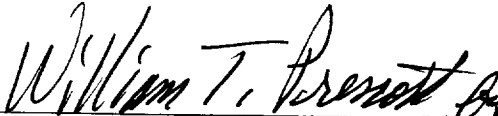
The very structure of BellSouth's SEEM remedies plan is inadequate to detect and sanction poor performance. The plan is based upon an inadequate set of measures and a questionable remedy calculation methodology, imposes an absolute cap, fails to disaggregate results appropriately, and requires sustained levels of poor performance before remedies are invoked. Accordingly, the Authority should adopt the base remedy plan from the ITC^DeltaCom arbitration, with the enhancements proposed by the CLECs.

CONCLUSION

For the forgoing reasons, the Authority should adopt the base remedy plan with the enhancements and modifications proposed by the CLEC Coalition.

Respectfully submitted this 9th day of October 2001.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 9th day of October, 2001.

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